

**REPORT OF THE SENATE IMPEACHMENT TRIAL
COMMITTEE ON THE ARTICLES AGAINST
JUDGE WALTER L. NIXON, JR.**

HEARINGS

BEFORE THE

**SENATE IMPEACHMENT TRIAL
COMMITTEE**

UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

**THE ARTICLES OF IMPEACHMENT AGAINST JUDGE WALTER L. NIXON,
JR., A JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI, FOR HIGH CRIMES AND MISDE-
MEANORS**

**SEPTEMBER 7 THROUGH SEPTEMBER 13, 1989
EVIDENTIARY HEARINGS**

Part 2 of 4 Parts



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IMPEACHMENT TRIAL OF JUDGE WALTER L. NIXON, JR.

THURSDAY, SEPTEMBER 7, 1989

U.S. SENATE,
IMPEACHMENT TRIAL COMMITTEE,
Washington, DC.

The Committee met, pursuant to notice, at 9:37 a.m., in room SH-216, Hart Senate Office Building, Hon. Wyche Fowler, Jr., chairman of the committee, presiding.

Members present: Senators Fowler (chairman), Danforth (vice chairman), Heflin, Wirth, Reid, Robb, Kohl, Chafee, Jeffords, Mack, and Symms.

House managers present: Representatives Edwards, Cardin, Sensenbrenner, and Dannemeyer.

Counsel present: David O. Stewart, Peter M. Brody and Michael B. Holleman, counsel for Judge Nixon; Alan I. Baron, Special Counsel, House of Representatives; Peter E. Keith, Assistant Special Counsel, House of Representatives; Daniel Freeman, William Jones, Colleen Kiko, and Catherine LeRoy, counsel, House Judiciary Committee; Morgan Frankel, Assistant Senate Legal Counsel; and Donald A. Purdy, Jr., Counsel for the Senate Impeachment Trial Committee.

Staff present: Anthony L. Harvey, administrator, Senate Impeachment Trial Committee; P. Casey McGannon, staff assistant, Senate Impeachment Trial Committee; Isabel McVeigh, staff assistant, Senate Impeachment Trial Committee.

Katherine Urban, and Dorothy Wadley, staff members, House Judiciary Committee.

The CHAIRMAN. Ladies and gentlemen, good morning.

We are here today for an important constitutional obligation. The evidentiary hearings of the Senate Impeachment Trial Committee on the Articles Against Judge Walter L. Nixon, Jr., are now in session.

With the adoption by the Senate of Senate Resolution 128 on May 11, 1989, this committee was appointed to perform the duties and exercise the powers provided for in Rule XI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials. Rule XI requires this committee to receive evidence and to take testimony on these three Articles of Impeachment which were exhibited to the Senate that same day.

Following pretrial proceedings, we are here today to begin receiving evidence. At the conclusion of these trial proceedings, the committee shall, as mandated by Rule XI and by Senate Resolution

128, report to the full Senate in writing a certified copy of the transcript of the proceedings and testimony had and given before this committee, and, in addition, a statement of facts that are uncontested and a summary of the evidence that the parties have introduced on contested issues of fact.

These proceedings may be viewed live in each Senate office on television, and a videotape of the testimony will be made so that each Senator who is not on the committee may have an opportunity at any time to view the testimony of witnesses, as well as read the transcripts of their testimony.

Under Senate Impeachment Rule XI, the full Senate retains the power to determine the competency, relevancy, and materiality of the evidence that the committee will report to it. The Senate also retains the power to send for any witness to testify in open Senate or, indeed, to order that the entire trial be conducted in open Senate.

Regarding the House motion to exclude evidence of alleged prosecutorial misconduct and the respondent's motion to exclude evidence of the oil investments, these motions are hereby denied, subject to reconsideration if the evidence becomes too tangential or cumulative.

The Senator from Utah, Senator Orrin Hatch, who was elected the vice chairman of this panel, of necessity was forced to remove himself from this panel. In his place is the Senator from Idaho, Senator Steve Symms, and I would like to make the nomination this morning of Senator John Danforth of Missouri to serve as the vice chairman of this panel.

Senator CHAFEE. I second that nomination.

The CHAIRMAN. All in favor, please indicate by saying aye.

[A chorus of ayes.]

The CHAIRMAN. Those opposed, no.

[No response.]

The CHAIRMAN. The ayes have it. The ayes have it, and may the record show that it was unanimous.

We are now prepared to proceed with the parties' opening statements.

OPENING STATEMENT ON BEHALF OF THE HOUSE MANAGERS

Mr. EDWARDS. Mr. Chairman, I am Congressman Don Edwards who was chairman of the subcommittee that heard the impeachment in the House of Representatives.

Let me introduce the other House managers at this proceeding: Mr. Sensenbrenner, Mr. Dannemeyer, and Mr. Cardin; Mr. Brooks, chairman of the full committee, is also a manager but is not present today.

Let me introduce counsel for the House of Representatives who have been working on this case: Alan Baron, special counsel, and Peter Keith, assistant special counsel.

Mr. Chairman and members of the subcommittee, this impeachment trial is a final act of what has been a long and painful tragedy for the people of Mississippi and the Federal judiciary. We deal here with a Federal judge who committed perjury and lied but who, nevertheless, insists that we should continue to grant him the

high privilege of sitting on the Federal bench. Even though the task may be distasteful, the Congress has no choice, no choice here but to protect the public by removing Walter L. Nixon, Jr., from office.

After carefully investigating the facts and considering the evidence, the House voted 417 to 0 in favor of three Articles of Impeachment, and today we begin to present evidence to the Senate in support of these Articles of Impeachment.

The evidence will show that Judge Nixon felt trapped by his judicial salary. Believing himself to be in dire need of supplemental income, Judge Nixon met with Carroll Ingram, a friend of the judge's and an attorney who had practiced before him. Judge Nixon asked Mr. Ingram to ask one of his clients, oil and construction millionaire Wiley Fairchild, to put Judge Nixon in an investment. The evidence will show that Wiley Fairchild gave Judge Nixon a lucrative investment opportunity not available to the general public on very favorable terms.

Judge Nixon was grateful for the opportunity. He knew he owed Mr. Fairchild a favor and told him so. He said, and I quote Judge Nixon, "If there is anything that I can ever do for you, I'll do it. And if I can't, I will just tell you I can't."

As fate would have it, Wiley Fairchild's son, Drew, committed a crime. He was part of a conspiracy to smuggle a plane-load of marijuana into the Hattiesburg airport. The local prosecutor who ultimately took charge of the *Drew Fairchild* case was Bud Holmes. Holmes has been a very close friend of Judge Nixon for many years.

The evidence will show that Wiley Fairchild wasn't happy with the way Bud Holmes was handling the prosecution of his son's case. The case dragged on with no resolution. Drew's co-manager of the airport, Robert Royals, was part of the drug deal, but he hadn't been prosecuted. Wiley Fairchild thought he should have been, thought this was unfair. Royals was just as guilty as Drew, and Wiley believed that Drew had been targeted because his father was wealthy.

Wiley Fairchild thought District Attorney Holmes was black-mailing him. Fairchild knew Holmes and Judge Nixon were good friends, so Wiley took Judge Nixon up on his offer to help. Wiley Fairchild met with Judge Nixon and complained about being black-mailed by Holmes in connection with Drew's drug case. On the same day, Judge Nixon visited Holmes. Judge Nixon drank some whisky with his old friend, Bud Holmes, and relayed Wiley Fairchild's complaints. The evidence will show that in his conversation with Holmes Judge Nixon put in a good word for *Drew Fairchild*.

Holmes told Judge Nixon that a deal had already been worked out, that *Drew Fairchild* had agreed to plead guilty in return for probation and a fine. But knowing that Judge Nixon was interested in more investments with Wiley Fairchild, and to help the judge in his financial responsibility with Fairchild, Holmes instead agreed to sweep the case under the rug. Holmes told Judge Nixon he could pass the case to the files, which is a local procedure whereby the case would become inactive with no disposition at all.

The evidence will show that Judge Nixon spoke with Wiley Fairchild on the telephone the same evening. So did Holmes. During

the telephone call to Wiley Fairchild, Judge Nixon told Fairchild that he was out at Holmes' farm and that Drew's case would be taken care of to Wiley's satisfaction. During the same telephone call, Holmes told Fairchild that Judge Nixon deserved the credit, saying, "When this man asks me to do something, I don't ask questions. I just go ahead and do it."

Later, Judge Nixon told Carroll Ingram that Wiley had asked him for help and that he had spoken with Holmes about Drew's case with positive results. The evidence will show that Judge Nixon told Ingram about his involvement in Drew's case, at the same time as the judge was seeking other investments from Wiley Fairchild. In an effort to enhance his prospects for another investment, Judge Nixon told Ingram that he had helped Drew.

On December 23, 1982, Drew's drug-smuggling case was passed to the files as promised. But a new judge assumed the bench. The new judge complained about the handling of the case, and Holmes, the district attorney, reinstated the case to the active docket a month later. Even though Drew had pled guilty, he still had not been sentenced.

Now, late in 1983, the FBI got a phone call. A confidential informant suggested that there might be some tie between the Nixon-Fairchild investment and the strange handling of the *Drew Fairchild* drug-smuggling case. Three years had passed since the drug bust, yet Drew hadn't been sentenced. The informant, who was an employee of Wiley Fairchild, said that the deeds and notes in the Nixon-Fairchild investment were signed in February 1981 but had been back-dated 1 year to a date prior to the Hattiesburg drug bust.

Could this have been to cover up any possible bribe? That was the question the FBI was asking itself.

The Department of Justice investigated. Early in the investigation, the Justice attorney and an FBI agent interviewed Judge Nixon in his chambers. In the interview, Judge Nixon repeatedly denied any knowledge of *Drew Fairchild* or the drug case. Judge Nixon never disclosed his meeting with Wiley Fairchild when Wiley Fairchild complained about the blackmailing in connection with his son's case. Judge Nixon never revealed his meeting with Holmes. The judge did not reveal his telephone call from the farm with Fairchild. His denials were categorical.

Judge Nixon repeated his denials in sworn testimony before a grand jury. Judge Nixon's failure to tell the truth to the grand jury led to his conviction on two counts of perjury.

The first two impeachment articles track Judge Nixon's criminal convictions and focus on the very same grand jury statements found to be false in Judge Nixon's criminal trial. Article III of the impeachment alleges these statements along with other false or misleading statements by Judge Nixon in the interview and in the grand jury. A total of 14 false or misleading statements are alleged in Article III, all part of an effort by Judge Nixon to conceal his knowledge and involvement in the drug case.

Because the committee has already admitted into evidence the complete criminal trial and House impeachment testimony and exhibits, the House intends to make its presentation of live witnesses as succinct as possible. We will not duplicate the lengthy criminal

trial. Instead, the House will rely on the record as to minor points, but give you the opportunity to hear the critical evidence firsthand. Also, we have pulled from the prior record those exhibits we believe are particularly worthy of your attention.

The first witness who will testify will be Kenneth White-Spunner. Mr. White-Spunner is a retired FBI agent who was involved in the Federal investigation leading to Judge Nixon's conviction. During his testimony—I don't think we will have the tapes according to the chairman at this time.

We urge you to read carefully Judge Nixon's interview and grand jury statements. This is the heart of the case. Focus on Judge Nixon's own words. Listen as Judge Nixon repeatedly denies any knowledge or involvement in the *Drew Fairchild* case.

You can read in the transcript Judge Nixon telling the Federal investigators in the April 1984 interview—I'm talking now about the interview with the FBI agent and with the Federal Department of Justice lawyer—wherein Judge Nixon denies that he ever discussed anything about Wiley's son's case. He denied that Wiley ever brought up his son's case; that nothing was ever mentioned about Wiley's son; that Judge Nixon knew nothing about the *Drew Fairchild* case and didn't even know Drew existed except what he had read in the newspaper and learned during the interview.

And in the tapes and in the transcripts, you will hear Judge Nixon repeat these denials in his sworn testimony before the grand jury in July 1984. You'll hear Judge Nixon tell the grand jury under oath that Forrest County District Attorney Bud Holmes never discussed the *Drew Fairchild* case with him. You'll hear or read Judge Nixon tell the grand jury under oath that he never had anything to do with the *Drew Fairchild* case, that he never talked to anybody about the case. You'll hear Judge Nixon tell the grand jury that he didn't know of any reason why he would have met with Wiley Fairchild after his investment with Fairchild was finalized in February 1981. So examine these statements very carefully.

Keep Judge Nixon's denials of any knowledge of *Drew Fairchild* and the drug case in mind as you hear the testimony of the next three witnesses: Wiley Fairchild, Bud Holmes, and Carroll Ingram. These three witnesses will describe Judge Nixon's involvement with Drew's case. The collective testimony of Fairchild, Holmes, and Ingram will show that Judge Nixon lied to the interviewers and to the grand jury.

You will learn that Wiley Fairchild, Bud Holmes, and Carroll Ingram are all friends of Judge Nixon. You will also learn that three of the key players here are convicted criminals. Wiley Fairchild pled guilty to giving Judge Nixon an illegal gratuity in the oil and gas investment. Bud Holmes pled guilty to contempt in failing to be truthful before the grand jury concerning his contact with Judge Nixon about the *Drew Fairchild* case. And, of course, Judge Nixon has been convicted of perjury.

After the testimony of Wiley Fairchild, Bud Holmes, and Carroll Ingram, we will present to you excerpts from the sworn testimony of Judge Nixon himself. After hearing the evidence, you may conclude that the key witness against Judge Nixon is not Bud Holmes or Wiley Fairchild or even Carroll Ingram, but Judge Nixon himself.

Compare what Judge Nixon said in the interview and in the grand jury with what he says now. You'll find that there is no way to reconcile Judge Nixon's current version of the events with what he said during the interview and to the grand jury. Judge Nixon's testimony is riddled with inconsistencies. The evidence will show that Judge Nixon has little regard for the truth and cannot be trusted with the heavy responsibilities of a Federal judge.

A word about Judge Nixon's defense. In the House proceeding and in the pretrial statement to this committee, Judge Nixon portrays himself as a victim of prosecutorial misconduct by the Department of Justice. If true, this could be a serious matter. Each of us in Congress is acutely aware of the potential for over-reaching by zealous prosecutors from the executive branch. But during the House proceedings, we found little support for Judge Nixon's claims.

Importantly, the judiciary has also carefully examined these charges. Judge Nangle in St. Louis held a two-day trial, reviewed the prosecutorial misconduct allegations and rejected them. Two weeks ago, the Fifth Circuit affirmed Federal Judge Nangle's ruling on appeal, finding that Judge Nixon received a fair trial.

As you listen to the evidence, if you do have concerns that the Department of Justice may have crossed the line of impropriety, ask yourself this: Does misconduct by the Department of Justice, even if true as alleged, permit a Federal judge to lie to investigators and to a grand jury? The answer should be obvious.

In short, the evidence will show that Judge Nixon repeatedly made false or misleading statements in his interview and before the grand jury. Lying to Federal investigators is a crime in violation of 18 U.S. Code Section 1001. Lying to a grand jury is also a crime for which Judge Nixon has been duly punished.

Such behavior by a Federal judge cannot be excused. We believe that when you review the prior record and consider the evidence presented during the trial, you will agree that Judge Nixon must be removed from the bench.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Congressman Edwards, very much. Congressman Don Edwards of California.

Does that conclude the opening statement of the House?

Mr. EDWARDS. Yes, Mr. Chairman.

The CHAIRMAN. Mr. Stewart for Judge Nixon for your opening statement.

OPENING STATEMENT ON BEHALF OF JUDGE WALTER L. NIXON, JR.

Mr. STEWART. Thank you, Mr. Chairman, Senators.

Before I get under way, I wanted to introduce my co-counsel. Judge Nixon is sitting at the table with me. Several of you have had the chance to meet him. I'm also working with Peter Brody from my law firm, and Mike Holleman from Gulfport has worked with us throughout this case.

The CHAIRMAN. Thank you.

Mr. STEWART. I ought to note at the threshold here that I got a message a couple of days ago that the committee had waived any time limit and was looking for a pretty good road map of what the

case would be. So I have prepared a pretty good road map, I think, of what the case would be. It's going to be a little bit longer than what Congressman Edwards said.

I want to start out, though, by making clear that we really welcome this opportunity to appear here today. This is the first time we've really had a chance to focus solely on these false statement allegations. There have been other proceedings in this case, but they have been shadowed by the corruption charge, the bribery charge, the gratuity charge, which, of course, the House managers still try to use for coloring. But read the Articles of Impeachment. That's not the allegation here. The Articles of Impeachment are solely false statement, and we're going to try to keep the case focused on that.

When you look at those charges in the hard light of day, there's nothing there. There was nothing—the witnesses are going to tell you this; there was nothing illegal, improper, or even embarrassing about the investment, about the oil properties he purchased from Wiley Fairchild. Again, that's not charged here.

But you also need to know a little bit more about Walter Nixon. He will testify here, so you'll get a chance yourself to take his measure. I want to provide a little background. He was a successful private attorney in south Mississippi. At the age of 39, he was appointed to the Federal bench by President Johnson. He has had a distinguished career as a judge. He's based in Biloxi, but in the Southern District of Mississippi, the judges have to ride the circuit. So he holds court in Meridian, in Hattiesburg, in Jackson, and other cities. So some weeks he's in Hattiesburg, which is about a 90-minute drive from Biloxi. And most of this case is going to concern Hattiesburg. It's not his home town.

He's been highly regarded by his colleagues on the bench and by the bar, and in 1982, the Reagan administration offered to appoint him to the Fifth Circuit Court of Appeals. Because Judge Nixon's always been a trial lawyer and a trial judge, he declined that opportunity.

I'll have to get used to the buzzers. I'm sorry, gentlemen.

The CHAIRMAN. You're all right. Keep going.

Mr. STEWART [continuing]. He raised seven children. In fact, he's not done yet. His youngest, Courtney, is 11 years old. But this happy story was interrupted in 1984 by the Federal investigation. The Federal judge is at the center of this case. There's no charge here that Judge Nixon misused his office. There's no charge here of corruption. There's no charge of any illegal action. The charge is that he gave false statements in response to the investigation. So you've got to understand what this investigation was.

What is the animal, the white collar investigation? And I think Congressman Edwards kind of alluded to some of the problems we've discovered with this particular animal. It's a backwards kind of investigation. It starts with the target. That's how it started in this case, with the target, the big prize. You'll discover that that's what Judge Nixon was for these investigators: the big prize.

There's a saying about the difference between white collar crime and street crime. In a street crime case, you know what the offense was. There was a robbery; somebody got robbed. There was a murder; somebody got killed. You got to figure out who did it.

That's the issue. In a white collar case, you know who the crook is. He's your target. You know that right at the beginning. You just don't know what he did. So you turn his life inside out. You pull in everybody he ever did business with. And you ask him questions and you sweat him and you scare him and you hope you turn something up. And even if you don't turn something up, which they didn't here, maybe the target will mess up the investigation. Maybe he'll make a wrong step.

That's what the law enforcement effort was in this case. The investigation found no crime by Judge Nixon. The investigation purported to produce the crime of making false statements.

Now, the investigation was triggered by false allegations by Skip Jarvis. You won't hear from Skip Jarvis. The House managers have decided not to call him as a witness. He was the anonymous informant. He was a relative, a distant relative by marriage of Wiley Fairchild. Mr. Fairchild was an older man. He was 70 when the case got under way. He's older now. Very successful man. He's built a family business, multimillion-dollar business. Skip Jarvis wanted to get rid of Wiley, get him out of the company, so he started his campaign and started a series of anonymous phone calls that Judge Nixon had been bribed to steer the *Drew Fairchild* case from Federal authorities to the State prosecutor, Bud Holmes.

Now, this was a false accusation. And when the prosecutor got to his final statement to the jury in the criminal case, he said Skip Jarvis has no evidence. We get no evidence from Skip Jarvis. This was something Skip Jarvis made up in his mind. But he put together two facts that had nothing to do with each other: *Drew Fairchild's* drug case and Judge Nixon's purchase of those mineral interests from Wiley Fairchild.

I want to talk for a minute about both of those. Drew's case takes a minute longer than the other. It's a little complicated. *Drew Fairchild* is Wiley's grown son. He's about 50 years old during this case. It's a little misleading. Sometimes you think there's some poor kid who got in trouble. It's a 50-year-old man. He had an airport service business out at the Hattiesburg Airport, and he got involved in this marijuana-smuggling operation. There were four other smugglers who were caught. A plane was seized at the airport full of a ton of marijuana.

The evidence clearly pointed to Mr. Fairchild. He made a deal with the Federal prosecutor up in Jackson, the U.S. attorney, a man named George Phillips, who it turns out is also from Hattiesburg, also an old friend of Bud Holmes. He makes this deal in November 1980, but nothing happens. He never gets prosecuted. He never gets indicted. Nothing happens.

Now, it also turns out—now, that's puzzling, but it also turns out that there are other smugglers who don't get prosecuted either, and that's kind of puzzling, too. But then something very unusual happens to *Drew Fairchild*. He's represented by a man named Bill Porter. Mr. Porter drowned in a plane crash in 1983, so you won't hear from him and there's no testimony from him. But he's important to this case. He thought *Drew Fairchild* owed him \$10,000 for negotiating that Federal plea. Drew didn't think so, so he didn't pay it. So Bill Porter sued him.

Then a very odd thing happens. Mr. Porter goes to see his friend, Bud Holmes, and he says to Mr. Holmes, "I can't believe it. I got a 50-year-old guy whose father's the richest man in Hattiesburg. He gets caught in the middle of a big drug-smuggling ring. I get him a plea bargain where he's not going to go to jail, and he won't pay the fee." He's pretty hot about it. And Bud, who's a good friend of his, is pretty hot about it, too. He thinks that's not right.

So Bud calls up George Phillips, the U.S. Attorney, his friend in Jackson, says, "Do you mind if I indict *Drew Fairchild*?" Mr. Phillips says, "No, it's okay by me. There's concurrent jurisdiction. Go ahead." So Bud Holmes indicts *Drew Fairchild*. Now, he's indicting the man to make him pay his fee. This is extraordinary. This is not anything I've ever seen before and anybody I've ever spoken to has ever seen before.

He's indicted along with a fugitive. They're indicted together. A man named Robert Watkins who's never been caught. Never been brought to justice is probably a better way to put it. He was not in custody at the time, they didn't know where he was, but they indicted him anyway.

That happens in August 1980. Wiley pays the fee. Bill Porter gets paid. Then in January 1981, Drew makes a deal with Bud Holmes. He's going to get the same deal he had with the Federal Government: no jail time, probation only, and he's got to testify against Bob Watkins if they ever catch him, the pilot.

Then throughout 1982—excuse me. I had my dates wrong. I'm going to have to back up. He's indicted in August 1981. He pleads guilty in January 1982. He has back surgery in 1982. Nothing happens in the case all through 1982. Then in November, the elusive Mr. Watkins is arrested. They find him in Florida, and they start extradition proceedings. It looks like finally Drew is going to get his case taken care of. He can testify against Watkins. They'll bring him back to Mississippi. He gets sentenced. He gets probation. He goes on with his life. Everybody's happy. But then Bill Porter gets upset again. Now he's been paid so now he's working for his client, and he says to Bud Holmes, "We've got a new judge coming in here, Judge McKenzie, and I don't know about Judge McKenzie. I supported his opponent, and he's got this program where he says he's going to lock everyone up and throw away the key. And we got to do something. We got to save poor ol' Drew."

So Mr. Holmes takes this other unusual step and passes the case to the files. That's a Mississippi procedure. It doesn't mean anything substantively. *Drew Fairchild* was still a convicted felon. His case still could be brought up at any time. It physically moved the case from one place to another. Thirty-three days later, though, Mr. Watkins is returned to Mississippi, and the case comes right out of the file. The real reason it comes right out of the file, of course, is that the press got wind of this, and there is a firestorm of press. And that's important.

In January 1983, the press goes nuts, Wiley goes nuts, Bud Holmes is running in circles, Bill Porter's upset. Everything's a mess right then. Drew's case is blown up. That's what Skip Jarvis had. That's what he knew about. He didn't know all of that, of course. I ought to correct myself, but he knew that the case had

been to the files and had come back from the files. It started out as a Federal case, went to the State.

All right. The second fact he had was this investment. There was nothing illegal, immoral, or even embarrassing about that investment. He bought three oil interests. He paid a fair price for them. Two of them paid off well; one wasn't too good. He had other oil investments at the same time, didn't pay off very well. That's what investments are like, especially oil investments. Sometimes you get sand, sometimes you get sea water, sometimes you get oil.

It was a completely public transaction. It was reported on the land records in the State, in Mississippi and Alabama. It was reported in his financial disclosure forms. The jury acquitted him of that charge, and there's no charge here relating to that investment. But Mr. Jarvis put those matters together, decided that Wiley Fairchild had bribed Judge Nixon to steer the case to State prosecutor Bud Holmes, and he sold that story to the FBI.

Then the FBI and the Justice Department put it together with another story. Now, this is a little to the side of this case, and I'm only going to talk about it for a second. But at the same time, they were investigating so-called Petit Bois Island. That's a barrier island off the coast of Mississippi that was condemned for inclusion in a national seashore. The Government didn't want to pay much money for the land. The landowner wanted to get paid a lot of money for it. It went to trial before Judge Nixon. He awarded \$6 million to the landowners. The Government, always gracious in defeat, started a grand jury investigation, decided it had to be corrupt. There had to be something wrong here.

So that investigation started and was joined with this one. Judge Nixon's never been charged with anything on that. But there's one parallel I want to point out between the two cases. In both investigations, people got indicted because they stood between the Government and Judge Nixon. In the case you're going to hear, it was Bud Holmes and Wiley Fairchild. In the other case, it was two men from Florida named John Stocks and Eugene Lewis. That's the parallel.

There's also a distinction. In both cases, those men were told: Give us Judge Nixon or you got big trouble, you're going to get indicted or we're going after you. In our case, Mr. Holmes and Mr. Fairchild cut deals. In the other case, Mr. Stocks and Mr. Lewis said to the Government: Stick it. You don't have a case, and I don't know anything about Judge Nixon. And they did go to trial, and they were acquitted.

Now, as the investigation unfolded, the events of this single day in Hattiesburg became important. I want to emphasize that at the beginning of the investigation, at the time of those events in Hattiesburg, they were of no particular importance. Nobody thought they were important. On that day in March 1983, as Judge Nixon remembers it, he was trying a case in Hattiesburg. He dropped by to see Wiley Fairchild just to say hello—he had just paid off his notes on the oil investment—and tell him he appreciated the opportunity to do business with him.

Mr. Fairchild told Judge Nixon that Bud Holmes and maybe Carroll Ingram were blackmailing him. That's a real unusual thing to hear. That was a surprise to Judge Nixon. He didn't know what to

say about it, what to do about it. He had no idea what the man was talking about. It had something to do with Drew's case. Judge Nixon was seeing Bud Holmes that evening, and he did see him, and he mentioned that Wiley Fairchild was saying that Bud was blackmailing him.

Mr. Holmes reacted angrily, as you would expect. He said, "The old man is crazy, he thinks everybody's after his money. Drew's got a plea bargain. Let me tell you about the case."

Judge Nixon said—and it's undisputed in the record. He said, "I don't want to hear about the case. I don't need to hear about the case."

Then Mr. Holmes called Wiley, put Judge Nixon briefly on the phone. Both Judge Nixon and Wiley Fairchild have testified, and will testify, they thought this conversation was all about the blackmail allegation. Mr. Holmes' description of the events is disputed. In fact, it's going to be disputed by every witness you hear who knows anything about it. Mr. Fairchild disputes Holmes' description of what was said on that phone call. Carroll Ingram disputes Mr. Holmes' claim that Mr. Ingram went to Holmes' office that day with Judge Nixon. And Judge Nixon is going to dispute Mr. Holmes' version of what was said between the two of them.

But a key point here that's easy to lose sight of as I go through each step: nothing illegal happened in that conversation or that phone call. Under anybody's description of what happened that day, nothing wrong happened. Even under Mr. Holmes' disputed version.

Now, we finally get to the two events that are in the Articles of Impeachment. The first is the interview by the Federal investigators. When you look at the transcript and you listen to the tape, Judge Nixon is caught pretty flat-footed when they show up. He does not really know what's going on. His answers are forthcoming. He volunteers information. He tells the investigators, "There was something unorthodox about that investment. I'm not sure exactly what. I don't remember." Then he thinks, "I think it had something to do with the date or the royalties being paid." He's a judge. He's got a caseload of 950 cases. This is not uppermost in his mind.

When you listen to him, if you listen to the tape or you look at the transcript, he's not concealing anything. And listen to what the investigators tell him they're investigating, because that's important. How are they shaping his understanding of the questions? They tell him they're looking into the oil properties that he purchased, if he got a sweetheart deal. They tell him they're looking into how *Drew Fairchild's* case got from Federal prosecutors to Bud Holmes. And Judge Nixon knows that oil transaction was entirely proper, and he knows that there was no connection between Drew's case and between the oil transaction. And he knows that he doesn't know anything about how Drew's case ended up in Bud Holmes' hands. And he says so. And he never thinks of this particular peculiar exchange about Wiley's blackmail allegations. It just never clicks. And it's understandable. He's never been asked squarely about it.

In the grand jury, which is three months later—that happens in April 1984. In the grand jury three months later, it's a different Judge Nixon. I freely describe him to you that way. There's been

three months of investigation. There's been leaks to the press. There's been tremendous publicity in the media. We've included as our exhibit 74 a gag order that was entered by the judge supervising the grand jury. The gag order said no more leaks. It said—I'm probably a little tardy entering this order, but it told the FBI and it told the Justice Department no-more leaks. Don't try your case in the press any more.

But in the grand jury testimony, you can almost feel it in the pages. Judge Nixon is angry. He's combative. Frankly, he's an impossible witness. You can almost see him shaking his finger at the prosecutor. He argues with the prosecutor. He gives a speech at the end. Now, that's a terrible speech for a lawyer to hear because he wasn't really even asked a question. But he went in there to tell them that nothing was wrong, that he didn't do anything wrong when he was dealing with Wiley Fairchild. He's not concealing anything. He volunteered to go before the grand jury. He wasn't even subpoenaed. He's there to deny that anything was done wrong, and he does so. And it's true.

I want to talk for a second about the conviction because, as a matter of law, that conviction's irrelevant to this trial. You can't pay any attention to it. That's what the Framers of the Constitution intended when they set up the impeachment mechanism. That's what the Senate itself said in the *Claiborne* case when they rejected an impeachment article based on a conviction. To preserve the constitutional separation of powers, that conviction cannot matter for anything in this proceeding.

But I'm a nervous person, and I'm afraid that's going to prey on your minds anyway. So I want you to understand how that conviction was won. We've included—and this was not something I would usually do, but we've included the prosecutor's closing statement at trial as one of our exhibits. It's exhibit 62. You need to see it because it's a masterful effort at distracting the jury. The key issues here on the perjury counts were: What was said and what was understood among Judge Nixon, Bud Holmes, and Wiley Fairchild on the day they spoke? What was in Judge Nixon's mind when he testified? What was his intent?

Instead, the prosecutor distracted the jurors. He focused on other issues. He staked his case—he staked his case—on when the date was of the phone call. He said a critical issue was who dialed the phone, Judge Nixon or Bud Holmes.

Now, we don't want this trial to be sidetracked on those issues. We think the prosecution's case was wrong on those issues, but we want to focus on the main issues. But we also need you to understand that the prosecutor's argument in that respect was rotten. It was rotten at its core.

Mr. Fairchild has admitted at trial that he lied about the date of the phone call. That's the issue on which the prosecutor staked his case. He said he did so to please the prosecutors. Now, that's an extraordinary admission. Mr. Fairchild had nothing to gain by it. It seriously undermines the force of the conviction.

We've also uncovered evidence—and we'll present a witness, John Baltar, to describe some of it. We'll bring some of it out on cross examination—that Mr. Fairchild was induced to give this

false testimony by heavy pressure, by promises, by winks and nods, very clever work by the prosecutors.

We've also discovered that the Government suppressed testimony that corroborated Judge Nixon's recollection, particularly on the question of who placed the phone call. There's testimony by a man named Karl Kepper who was Wiley Fairchild's lawyer. We have marked it as exhibit 47. We didn't have that at trial. According to Mr. Kepper, Wiley said at the beginning, "Bud Holmes placed the call."

There's other evidence. There's an FBI memo, exhibit 36, also suppressed at trial, concealed from Judge Nixon, which also said that Wiley claimed Bud Holmes placed the call. The Government not only suppressed that evidence, you can tell from that closing statement they were playing for the compromise verdict. They were coming in with a gratuity count that was not soundly based. In fact, the prosecutor testified in the House hearings, "Well, the evidence didn't come in very well on the gratuity count." Of course it didn't come in very well on the gratuity count. There wasn't any evidence on the gratuity count. But he was playing for a compromise verdict, and he got it.

Now, we've cleaned out that distracting underbrush. That's the advantage of this hearing for us. There's no reason for the Senate to come to a compromise verdict. There's no reason for you to be distracted by the oil transaction as though there is something wrong with that.

I want to quickly describe some of the testimony we expect. It's going to be a little bit frustrating to hear the evidence because it's not going to fit together terribly well. Starting with Wiley Fairchild, he's a man who's changed his testimony several times. His initial statements to the prosecutors he changed to conform to the prosecutors' theory of the prosecution. Then last year he recanted that version. He's a tough witness to follow. You're going to have to pay careful attention to him, figure out what you think about what he is saying. But he will tell you some things he has always said that are important: that there was nothing corrupt or sinister about that oil transaction, and he'll tell you that there was a blackmailing scheme, that he suspected Bud Holmes of blackmailing him all along.

You don't need to decide whether there was truly a blackmail scheme. That's not something you need to figure out, but you need to understand that that was in Wiley's mind. That was a fixed idea for years. He'll tell you that he told Judge Nixon that Bud was blackmailing him. He didn't ask for any help. He was hoping Judge Nixon would mention it to Bud Holmes and that the blackmail would stop. But he wasn't seeking leniency for Drew, and that's important here.

He's got a 50-year-old son who was up to his eyeballs in a drug-smuggling conspiracy. He was not looking for leniency. He was trying to stop the blackmailing of him. And, in fact, he was unwilling to pay for leniency for *Drew Fairchild*. That's why he wanted to stop the blackmailing. And he'll tell you that he thought that was the only subject of conversation between him and Judge Nixon, between him and Bud Holmes on the phone call.

You'll hear from Bud Holmes, and he's a complex witness. He's one on whom the House managers case is going to rely a good deal. They need you to believe a lot of his testimony, and you're going to have to struggle with that. You're going to have to decide if he's added some flourishes. You're going to have to decide on the quality of his memory, because it's going to be clear that Mr. Holmes, like Wiley Fairchild, was under terrific pressure, that he was overwrought and upset, and that the quality of his memory on these matters is highly questionable. Indeed, as I've said, his description of that single day is contradicted by every other witness who knows anything about it.

You'll even find out that he's contradicted himself. Mr. Edwards in his opening statement mentioned something about how Bud Holmes said he wanted to sweep Drew's case under the rug. He said that. He also said he didn't want to sweep Drew's case under the rug. Those quotations are seven pages apart. The answers he has given to that question are yes and no. That's a tough witness to believe in. I think you'll also find, though, that even his story doesn't involve anything wrong. It doesn't make Judge Nixon into someone who's given false statements.

Carroll Ingram, he'll tell you that the investments were entirely proper. He was involved in papering them, putting the documents together, and that there wasn't anything wrong about it, and he's said so for the last 5 years. And he has no firsthand knowledge of the other facts in the case, and he's not a terribly important witness.

Our case, most of it, will come in on cross examination, or a lot of it will come in on cross examination of the House managers' case. We're going to present several witnesses, we think, like John Baltar—whom the jury didn't hear—who will lay out some of the actions by the prosecutors and also some of the actions in *Drew Fairchild's* case. We also expect to bring some character witnesses in so you can get a feel for the kind of person, the kind of judge Judge Nixon is.

But the most important witness is going to be Walter Nixon, and you're going to have to decide two questions about him. You're going to have to decide what was in his mind when he answered the questions involved here. What was he thinking about? What did his answers mean in context? The House managers must prove, and it's their burden of proof, that there's no reasonable basis, there's no reasonable construction of what he said to make it truthful. Instead of shouldering that burden, what they've done in their briefs, what they've done in the Articles of Impeachment, and what they did here again this morning, is to chop up his testimony, take it all out of context.

There's a statement in that speech he gave at the end of the grand jury testimony where he said, "I haven't talked to any Federal or State official," and that's where the quote always ends when the House managers talk about it. But on the tape recording, in the transcript, it goes on. It says, " * * * to influence *Drew Fairchild's* case." Well, that's the whole statement you've got to look at. You can't just look at the little snippet that they take out. You've got to understand what he was asked about beforehand

throughout that period, what he was asked about at the interview, to understand the question he's answering.

Now, I hope to talk to you again at the end of the case to tie the evidence more closely to the actual charges that have been made. But I also want to highlight the second fact that you have to look at, the second question you have to ask. I'm comfortable and have been comfortable throughout that his testimony, his answers, when he said he didn't discuss Drew's case, that that was a true answer. He didn't think about this blackmail conversation. He thought that was something else. It just didn't click. It didn't come to mind. And that wasn't a false statement. But you also have to figure out—and you're going to have to conclude that he intentionally stated falsely what they claim were false statements.

Chief Justice Burger wrote in an important case in this area that it's not uncommon for the most earnest witness to give answers that are not entirely responsive. The burden is on the questioner to establish clearly and cleanly whether the statements were merely a testimonial mishap that could readily have been cured by a single additional question. They could have asked him about the blackmail conversations. They knew about them. Wiley Fairchild in April 1984 says to the FBI, "I'm being blackmailed." They go talk to Judge Nixon 7 days later. They never ask him that question. Why didn't they ask him that question? If they'd asked him that question and he'd said, "I don't know anything about it," then maybe there's a case.

They go to the grand jury three months later. The blackmail allegation is the issue, but they never ask him about it. They ask Carroll Ingram about it when he's before the grand jury the next day, but they never ask Judge Nixon about it.

Then when you look at the intent issue, think about three factors here, and then I'm going to close. First, he voluntarily submitted to the interview. He consented to tape recording of his interview. And then he voluntarily appeared. He demanded to appear before the grand jury. These are not the furtive actions of a coverup. These are the outraged actions of somebody who is somewhat self-righteous about it but who knows he's innocent of any wrongdoing.

Second, second factor: There's nothing illegal to cover up, and he knew it. There was no wrongdoing.

The third factor is: Even if you think he wanted to cover this up, he knew that there were three other people out there who knew all about these exchanges, these blackmail conversations. Why would he try to cover it up then?

To convict, you've then got to find all three of those elements here. You've got to find that Judge Nixon volunteered to testify before the grand jury with an intent to cover up truly legal—nothing wrong with them—events that other people knew about. The evidence and your common sense will not support that conclusion, and that's why we welcome this opportunity to appear here today. We have a chance to right a terrible wrong that's been done to Judge Nixon.

Congressman Edwards talked about a long and painful tragedy in this case, and it has been a long and painful tragedy, but it's been to the cause of justice, it's been to the judiciary, and it's been

to Walter Nixon. We look forward to the chance to right that wrong. Thank you.

The CHAIRMAN. Mr. Stewart, thank you.

I want to say as you begin, as both parties begin the presentation, the formal presentation of the case, though there will be no limitations by this committee especially in the presentation of the defense of Judge Nixon and the construction of the evidence in that defense by Judge Nixon's attorneys, I want to remind the committee and counsel that Judge Nixon is charged by the House in the Articles of Impeachment with false and misleading statements only. He is not charged with contributing illegal gratuities or any other matter that may or may not have been before his trial. He is charged specifically in Articles I, II, and III with false or misleading statements, and the basis of this inquiry on behalf of the full Senate is to the truth or falsity of these alleged perjurious statements. So that in the interest of justice as well as in the interest of all concerned, I urge on behalf of the committee that both sides, to the best of their abilities, limit this inquiry to an examination of the specific words charged as perjurious by the House in conjunction with the judge's testimony.

To the extent that this hearing can be ordered in that manner, especially in light of the fact that Judge Nixon, to my understanding, has admitted, in fact, what he has claimed what he has said before the the FBI inquiry as well as the grand jury, these matters would certainly help us sort out the truth of the allegations as charged.

Mr. Stewart.

Mr. STEWART. Mr. Chairman, just on that one point, there is a small issue—on the transcript of the grand jury, which now that we've had a chance to listen to the tape—

Senator CHAFEE. I wonder if Mr. Stewart could come forward.

Mr. STEWART. Can you not hear? I'm sorry.

The CHAIRMAN. Please.

Mr. STEWART. On the transcript of the tape from the grand jury, we've now had a chance to listen to it carefully, and we do think that there is an error and an issue in a spot where there is a charge, the question whether he spoke to anyone to influence them with respect to Drew's case. We think there is something in there that's been omitted. That was raised with counsel for the House managers, and we've not been able to resolve it so far. We'll keep you apprised.

The CHAIRMAN. You're certainly entitled to explore that and to make your case. But the central issue remains before the committee, and that is the truth of the statements that Judge Nixon made in his interview with the FBI agent, before the grand jury, and before the House impeachment inquiry, all of which were made under oath. Those questions have to be resolved from the words of Judge Nixon himself as to the veracity of those statements and whether or not those statements in and of themselves constitute perjury as charged.

The House may call its first witness.

Mr. KEITH. Mr. Chairman, the House would call Mr. White-Spunner.

The CHAIRMAN. Are you Mr. Kenneth White-Spunner?

Mr. WHITE-SPUNNER. Yes. I am.

The CHAIRMAN. Would you raise your right hand, please. Do you, Mr. Kenneth White-Spunner, swear or affirm that the evidence you shall give in the case now pending between the United States and Judge Walter L. Nixon, Jr. shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. WHITE-SPUNNER. Yes. I do.

The CHAIRMAN. I welcome Mr. Dannemeyer.

TESTIMONY OF KENNETH WHITE-SPUNNER

DIRECT EXAMINATION

Mr. DANNEMEYER. Mr. Chairman, members of the Senate.

Mr. White-Spunner, would you describe for us your education and work experience, please.

Mr. WHITE-SPUNNER. I'm a graduate of the University of Pittsburgh. I spent three and a half years in the Army, and became a special agent in the FBI in 1961, retired in January 1986.

Mr. DANNEMEYER. Very briefly, during your 25 years with the FBI, before you retired what positions did you hold?

Mr. WHITE-SPUNNER. I was a special agent the whole time and at the time I retired I was a senior resident agent in Pascagoula, Mississippi.

Mr. DANNEMEYER. Were you involved in an investigation of U.S. District Judge Walter L. Nixon, Jr. of the Southern District of Mississippi, and if so, in what capacity?

Mr. WHITE-SPUNNER. I was the original case agent on that particular investigation.

Mr. DANNEMEYER. Were you involved in that investigation from start to finish, namely, from when the investigation first began until Judge Nixon was found guilty and sentenced to prison?

Mr. WHITE-SPUNNER. Yes, sir. I was.

Mr. DANNEMEYER. At the time the investigation began, did you know Judge Nixon?

Mr. WHITE-SPUNNER. I had met Judge Nixon on one or two occasions. Yes.

Mr. DANNEMEYER. Would you describe for us, please, how the investigation of Judge Nixon began.

Mr. WHITE-SPUNNER. To my recollection, it was early November 1983. I was in my office in Pascagoula when I received a telephone call from an anonymous male caller. This individual told me that he had called FBI headquarters and talked to an agent, saying that he had information he wanted to relate about alleged wrongdoing in Mississippi. He didn't know anybody he could trust in Mississippi in the Department of Justice.

The agent that he talked to back here in Washington referred him to me by name. The individual called me, and without identifying himself in any way, he said that he had information concerning wrongdoing on the part of a Federal District Judge.

I don't recall, at that point, whether he gave Judge Nixon's name, or not, but he gave enough information. He said there was a well-to-do Hattiesburg, Mississippi businessman involved, and the businessman's son had become involved in a drug bust in 1980, and

that the Federal judge might have helped the businessman's son out of his difficulties in some manner.

Mr. DANNEMEYER. How long did this conversation take place, when this initial contact was made with you by this anonymous male caller?

Mr. WHITE-SPUNNER. As I recall, the conversation covered maybe 15 or 20 minutes, with the caller telling me that he would get back to me within a week, and I had no way of knowing who he was.

Mr. DANNEMEYER. Did the FBI attempt to verify information provided by the confidential informant?

Mr. WHITE-SPUNNER. He was not a confidential informant. I didn't even know who he was. He was strictly an anonymous person. His manner of speaking led me to believe that he had some legal background. He seemed intelligent. He seemed to know what he was talking about.

He gave us information indicating that there were certain oil well interests involved. As I remember the first conversation, I think he said there was a Getty Oil well involved, and he wanted to know if we could go to Getty Oil Co. and look through their records, and perhaps, you know, show where royalties were going.

He did not identify the specific well involved at that time.

Mr. DANNEMEYER. Can you describe for us, from an organizational standpoint, how the FBI handled the investigation, who was involved and what decisions were made as the case progressed.

Mr. WHITE-SPUNNER. The only people—

The CHAIRMAN. Mr. Dannemeyer, is that necessary? Can we not go to the actual interview?

Mr. DANNEMEYER. You bet we can, Mr. Chairman.

The CHAIRMAN. I would appreciate that. I would be glad to hear from you, but I think that unless there is objection from counsel, I believe we established that he was at the interview, and go to the interview, it will help us proceed.

Mr. DANNEMEYER. Did you, as a result of this contact by this anonymous caller, in a preliminary investigation, arrange to make an interview with Judge Nixon?

Mr. WHITE-SPUNNER. Yes. We did. That was in April of 1984, as I recall.

Mr. DANNEMEYER. And where did the interview take place?

Mr. WHITE-SPUNNER. It took place in Judge Nixon's chambers in Biloxi, MS.

Mr. DANNEMEYER. And who arranged it?

Mr. WHITE-SPUNNER. The interview was arranged, I believe, by the special agent in charge of the Jackson FBI office, Weldon Kennedy.

Mr. DANNEMEYER. And were you present for that interview?

Mr. WHITE-SPUNNER. Yes. I was.

Mr. DANNEMEYER. How long did it take?

Mr. WHITE-SPUNNER. I can only surmise it took probably about an hour.

Mr. DANNEMEYER. Was the interview recorded?

Mr. WHITE-SPUNNER. Yes. It was.

Mr. DANNEMEYER. Did you discuss with Judge Nixon the fact that the interview would be recorded?

Mr. WHITE-SPUNNER. Yes. Judge Nixon knew it would be recorded. The recorder was sitting right there on the edge of his desk.

Mr. DANNEMEYER. Did Judge Nixon approve of the interview being recorded?

Mr. WHITE-SPUNNER. Yes. He did.

Mr. DANNEMEYER. Please turn to exhibit 1 in the volume of the House of Representatives' exhibits. Exhibit 1 is the transcript of the April 19, 1984 interview with Judge Nixon. I would note, for the record, Mr. Chairman, the stipulation entered into by the parties attesting to the accuracy of the transcript.

At one time the House intended to have the tape played, but I understand that it will not be played as a result of an inability on the part of the prosecution and the defense to come to a stipulation that it should be played.

The tape is available, in the event that the Members of the Senate would choose to hear from it, but, at this time, we will not proceed with the playing of the tape.

The CHAIRMAN. It is the understanding of the committee that the complete, unedited transcript of the interview is before us as defense exhibit 43a, it says on mine. That the committee has determined, at this time, that we will rely on the written transcript of the tape, which I understand is about 2½ hours long. But the committee has granted to both counsel the right to make the request to play the entire tape, or portions of the tape, thereof, at a later time, if counsel wants to make that request.

Senator MACK. Mr. Chairman.

The CHAIRMAN. Yes.

Senator MACK. Mr. Chairman, could I have a clarification. I was under the impression there was going to be a playing of the tape. Again, what is the reason that this is not going to take place now?

The CHAIRMAN. Well, I had a discussion with counsel, and we have the full transcript that can be read, but also, I think it was agreed among the parties that at this time, we do not have sufficient information as to how all these participants and names that we have just heard about are, and it would be far more helpful—if it's necessary to hear the tapes, or if the committee decides to hear the tapes—once we know who Mr. Nixon is, and Mr. Fairchild is, and Mr. Holmes is, rather than listening for two and a half hours to tapes, where we don't know who we're talking about.

Senator MACK. Thank you.

The CHAIRMAN. Please proceed, Mr. Dannemeyer.

Mr. DANNEMEYER. Thank you, Mr. Chairman.

Mr. White-Spunner, did Judge Nixon, at any time in the interview, reveal that Wiley Fairchild had complained to him about being blackmailed in connection with his son's drug case?

Mr. WHITE-SPUNNER. No, sir. I don't believe he did.

Mr. DANNEMEYER. At any time during the interview, did Judge Nixon reveal that Wiley Fairchild had told him that Drew was guilty of drug charges, and that another man who was also guilty had not been prosecuted?

Mr. WHITE-SPUNNER. I don't think he did. No, sir. I don't recall that.

Mr. DANNEMEYER. At any time during the interview, did Judge Nixon reveal that after meeting with Wiley Fairchild he met with

Bud Holmes, the state prosecutor in the *Drew Fairchild* drug case, and later that same evening had a telephone conversation with Wiley Fairchild?

Mr. STEWART. Mr. Chairman, if I might object here just for a moment. We've got the transcript. We've got the tape. I don't really know what we're doing here. Mr. White-Spunner can't say anything other than what's in the transcript.

The CHAIRMAN. Mr. Dannemeyer's asking the witness what he heard, and he's entitled to testify, and you may cross examine him.

Mr. WHITE-SPUNNER. Would you repeat the question, please.

Mr. DANNEMEYER. I'll be happy to. At any time during the interview, did Judge Nixon reveal that after meeting with Wiley Fairchild he met with Bud Holmes, the state prosecutor in the *Drew Fairchild* drug case, and later that same evening had a telephone conversation with Wiley Fairchild?

Mr. WHITE-SPUNNER. No, sir.

Mr. DANNEMEYER. After the interview with Judge Nixon, were efforts made to interview other people who might have knowledge of the Nixon-Fairchild investment, and the handling of the *Drew Fairchild* case?

Mr. WHITE-SPUNNER. Yes.

Mr. DANNEMEYER. Did there come a time when a decision was made to empanel a grand jury?

Mr. WHITE-SPUNNER. Yes.

Mr. DANNEMEYER. Why was a grand jury necessary?

Mr. WHITE-SPUNNER. Well, to—so we'd have subpoena power for subpoenaing records that we thought we might need.

Mr. DANNEMEYER. Who actually issued the order to empanel a grand jury?

Mr. WHITE-SPUNNER. That would be a matter of record. I believe it was one of the judges on the Fifth Circuit.

Mr. DANNEMEYER. Did Judge Nixon appear voluntarily to testify before the grand jury after it was empaneled?

Mr. WHITE-SPUNNER. It's my understanding that he did. Yes.

Mr. DANNEMEYER. Let me direct your attention to exhibit 2, and is this the transcript of Judge Nixon's grand jury testimony?

Mr. WHITE-SPUNNER. Yes. It is.

Mr. DANNEMEYER. Here, again, Mr. Chairman, this tape is available for the members of the committee to examine in its detail. At one point we thought it would be played, but I understand that it will not be played in its entirety at this time.

The CHAIRMAN. The same stipulation. We have the entire written transcript of the grand jury proceedings. It has been admitted as part of the record by agreement of counsel, and if deemed necessary, at a later junction, it can be played.

Mr. DANNEMEYER. Thank you, Mr. Chairman. Did Judge Nixon, at any time during his grand jury testimony, reveal that Wiley Fairchild had complained to him about being blackmailed in connection with the *Drew Fairchild* drug case?

Mr. STEWART. Mr. Chairman, Mr. White-Spunner wasn't even in the room. He's got no basis for testifying about this other than the fact that he read the transcript.

The CHAIRMAN. Objection sustained.

Mr. DANNEMEYER. At any time during his grand jury testimony, did Judge Nixon reveal that Wiley Fairchild had told him that Drew was guilty, and that another man who was also guilty had not been prosecuted?

Mr. STEWART. The same objection.

The CHAIRMAN. Sustained. Mr. Dannemeyer, no questions where he would not have direct knowledge.

Mr. DANNEMEYER. After Judge Nixon appeared before the grand jury, did the investigation continue?

Mr. WHITE-SPUNNER. Yes. It did.

Mr. DANNEMEYER. Were a number of documents subpoenaed? Did many witnesses testify?

Mr. WHITE-SPUNNER. Yes.

Mr. DANNEMEYER. Were Wiley Fairchild and Bud Holmes ultimately prosecuted by the Government as part of this investigation?

Mr. WHITE-SPUNNER. Yes. There was no prosecution. Both of them entered pleas.

Mr. DANNEMEYER. Did both men plead guilty to crimes and then cooperate with the Government?

Mr. WHITE-SPUNNER. Yes. They did.

Mr. DANNEMEYER. Did there come a time when Judge Nixon was indicted on one count of receiving an illegal gratuity, and three counts of making false declarations to the grand jury, a form of perjury?

Mr. WHITE-SPUNNER. Yes, sir.

Mr. DANNEMEYER. Would you please turn to House exhibit 28. Is exhibit 28 Judge Nixon's indictment?

Mr. WHITE-SPUNNER. Yes. That's correct.

Mr. DANNEMEYER. Also, would you please turn to House exhibit 29. Is exhibit 29 the verdict form reflecting the fact that the jury found Judge Nixon guilty of two of the perjury counts?

Mr. WHITE-SPUNNER. Yes. That's correct.

Mr. DANNEMEYER. Would you turn, now, to House exhibit 3, Mr. White-Spunner. Do you recognize that as excerpts from Judge Nixon's interview and grand jury testimony?

Mr. WHITE-SPUNNER. Yes. That's true.

Mr. DANNEMEYER. With your permission, Mr. Chairman, I will be asking Mr. White-Spunner to read into the record the specific questions and answers given by Judge Nixon in the interview and grand jury that are directly at issue in the three articles of impeachment.

Mr. STEWART. Mr. Chairman, you know, I have a serious problem here. Mr. White-Spunner was not in the grand jury. This is all being taken out of context, which has been one of our major complaints throughout. This particular procedure—if they want to throw in this exhibit and say these are the passages we especially care about, that's fine, but I see no reason to have Mr. White-Spunner engage in a responsive reading on the subject.

Mr. BARON. Mr. Chairman, if I may be heard.

The CHAIRMAN. Speak up, please.

Mr. BARON. Mr. Chairman, it seems to me that the obligation, as I understand it, of this committee, is to develop a record that will be readily comprehensible to the other members of the Senate, so that they will be able to fully participate in the debate, and ulti-

mately understand exactly what the issues are, in a focused manner, that are represented to this committee.

Ultimately, your job, as I understand it, is to develop that record for the rest of the Senate, and it seems to me, having skipped over, at this point at least, the playing of the tape, and simply referring to rather lengthy transcripts, it seems to me that it will be very helpful, both to this committee and to the members of the Senate, to have particularized those portions of what is now simply referred to in general as a "long transcript." To have those portions highlighted, focused upon.

If any Senator wants to read the entire transcript for context, or if Mr. Stewart, at a later point, wants to develop more context regarding the excerpts, that's fine. I'm sure he'll be given an opportunity to do that.

But it seems to me, at this point, the House ought to be permitted to focus on particulars, in light of the fact that the Members of the Senate who are not here really should get that assistance in knowing exactly what the focus is.

Mr. STEWART. If I might respond, briefly, Mr. Chairman. I'm dazzled by the suggestion that somehow the Senators who aren't here are going to be able to vote up or down on these Articles of Impeachment based on Mr. White-Spunner's reading of the transcripts.

If they want to hear the tapes, and if we have to play the tapes, fine. Let's make that record. But this is very unfair, to have Mr. White-Spunner rather than Judge Nixon give Judge Nixon's answers. Or to have Mr. White-Spunner read the prosecutor's questions rather than hear the prosecutor's questions.

The CHAIRMAN. I don't see why it makes any difference who reads the now public grand jury testimony that is a part of the record. You can read them if that's preferable. He can read what is a part of the open record, and then you have a right to a thorough cross examination.

Continue, Mr. Dannemeyer.

Mr. DANNEMEYER. Thank you, Mr. Chairman. With regard to article I of the Articles of Impeachment, would you turn to tab B in exhibit 3 at page 47 of Judge Nixon's grand jury testimony, and read for us the highlighted portion beginning at line 19 of page 47 through line 3 of page 48.

Mr. WHITE-SPUNNER. "Question: The grand jury has heard evidence——"

The VICE CHAIRMAN. I'm sorry, Mr. Dannemeyer. I didn't have my book at the time. Could you tell us where this is, in our book, so that we can follow.

Mr. DANNEMEYER. You bet, Senator. Tab B in exhibit 3.

The VICE CHAIRMAN. I don't have any tab B.

Mr. DANNEMEYER. Page 47 of Judge Nixon's grand jury testimony.

The CHAIRMAN. Just one minute, Mr. Dannemeyer. Let's get all our books right here. We are under tab B, page 47, which I asked, again, Mr. Dannemeyer to identify the exhibit and what we are reading from.

Mr. DANNEMEYER. Thank you, Mr. Chairman. Would you read for us the highlighted portion beginning at——

The CHAIRMAN. This is the grand jury testimony, correct?

Mr. DANNEMEYER [continuing]. Yes, sir, correct—and read for us the highlighted portion beginning at line 19 of page 47 through line 3 of page 48.

Mr. WHITE-SPUNNER. "Question: The grand jury has heard evidence that the prosecutor, the state prosecutor who eventually handled the case was an individual named Bud Holmes. Is he a friend of yours?"

"Answer: Very good friend of mine. Long-time friend. Yes."

"Question: Did he ever discuss the *Drew Fairchild* case with you?"

"Answer: No, not to the best of my recollection. I think I would recall if he had."

Mr. DANNEMEYER. This same statement was also the subject of count three of Judge Nixon's indictment, the first perjury count on which he was convicted?

Mr. WHITE-SPUNNER. Yes.

Mr. DANNEMEYER. With regard to Article II of the Articles of Impeachment, would you turn, please, to page 75 of the grand jury transcript. That's also included in tab B of exhibit 3.

Would you please read the question at lines 14 and 15.

Mr. WHITE-SPUNNER. Mr. Weingarten, question. He says: "All right, Judge. Do you have anything you want to add?"

"The Witness: Yes. I do."

Mr. DANNEMEYER. From Judge Nixon's answer, could you please read on page 76, line 10, the sentence beginning with "Now" and ending on line 13 with "court."

The CHAIRMAN. If he's going to read that, let's read all of Judge Nixon's answer beginning at line 17.

Mr. STEWART. Mr. Chairman, just in this break, I would note that it's in this passage that we have a question about the transcript. It's at the bottom of page 76 and top of 77. The last three words on 76: "in any way influence anybody." We think something was dropped out of the transcript there. I just wanted to note that.

The CHAIRMAN. Well, it's noted for the record, but do you have any evidence of that?

Mr. STEWART. It's a tape recording.

The CHAIRMAN. All right. It's noted.

Senator CHAFEE. Well, Mr. Chairman, if I might ask a question. If the tape recording definitely shows that something's left out—

Mr. STEWART. Yes, sir.

Senator CHAFEE [continuing]. Does everybody agree with that? I mean, does Mr. Baron agree with that?

Mr. KEITH. Senator, if I may.

Mr. BARON. I'll defer to Mr. Keith on this.

Mr. KEITH. Senator, Judge Nixon has already stipulated to the accuracy of the transcript at trial, and that is part of the stipulation that precedes the grand jury testimony. I've listened to the tape with Judge Nixon's counsel, and, frankly, we do not agree with his interpretation of what was said.

Mr. STEWART. If I could note, the charge in the indictment inserted the word "to," "in any way to influence," and that's I think why the stipulation was agreed to at trial. We were not counsel at trial. Because that word was included in the charge against Judge

Nixon. It's not been included in the transcript, and there's clearly something left out, and we think it is "to".

The CHAIRMAN. The objection is noted and counsel will be able to argue the relevancy of that matter, whether the words were included, or not included.

Mr. White-Spunner, I want you to read Judge Nixon's total answer, beginning on line 17 through the highlighted portions, unless counsel wants to go further than that.

Mr. WHITE-SPUNNER. "The Witness: Yes, I do." Then he says: "I want to say this. I—here are your notes, too, copies of your instruments, rather. I came here voluntarily and am very happy to cooperate with this grand jury and give them all the information that I have and that I could. And I have always thought everyone should do that, and that goes for the grand jury over which I'm supervising right now. The other Federal grand jury that's sitting at this time. I have nothing at all to—had nothing to hide or nothing to withhold, and I brought everything that you have asked me to bring."

"And I want to say this: That I have been told, and led to believe, and read in the newspaper, and heard on the news media, so much about this, is an investigation of the *Drew Fairchild* criminal case. Now I have had nothing whatsoever, officially or unofficially to do with the *Drew Fairchild* criminal case in Federal court or State court. I don't need to reconstruct anything with reference to that. I've told you that from the beginning."

"I have never talked to anyone about the case, any Federal judge or State judge; Federal prosecutor or State prosecutor; and I never handled any aspect of this case in Federal court. As you said, Judge Cox handled it. I don't know where. Someone told me maybe Judge Russell handled one of the other defendants also and—but I never handled any part of it. Never had a thing to do with it at all, and never talked to anyone, State or Federal, prosecutor or judge, in any way influence anybody with respect to this case."

"Didn't know anything about it until I read that account in the newspaper. Didn't even know Mr. Fairchild had a son when I was dealing with him in the business transaction. So I want to say that because I understand that's what this is all about, the investigation is apparently—if the news media is correct, and if I understand it correctly—that's what this is about—the *Drew Fairchild* criminal case."

Mr. DANNEMEYER. Pardon me just a minute, Mr. Chairman.

[Pause.]

Mr. DANNEMEYER. These specific statements of Judge Nixon were the subject of count four of Judge Nixon's indictment, the second perjury count on which he was convicted?

Mr. WHITE-SPUNNER. Yes. I believe that's correct.

Mr. DANNEMEYER. Now with regard to Article III, could you turn to tab A on exhibit 3, and read for us the highlighted portion on page 25, beginning with Mr. Weingarten's question.

The CHAIRMAN. What is this?

Mr. DANNEMEYER. This is the interview of this FBI agent with Judge Nixon.

The CHAIRMAN. Tab A. Page 25. Correct?

Mr. DANNEMEYER. That's correct, Mr. Chairman.

The CHAIRMAN. All right.

Mr. WHITE-SPUNNER. Question from Weingarten: "Was there any other possible business that you discussed with him, other than these three wells? I mean, would——"

Answer from Nixon: "Not to my knowledge. I certainly never discussed anything about his son's case."

Mr. DANNEMEYER. Would you please turn to page 31 of the interview included in exhibit 3, and read the highlighted portion of that page.

Mr. WHITE-SPUNNER. Question: "From the time of that bust until basically me talking to you about the case—uh-huh—" question: "You've had no connection, no knowledge of it, and no participation, and——"

"Correct."

Weingarten: "The Drew Fairchild case?"

Answer: "Absolutely, except something I read in the paper."

Mr. DANNEMEYER. Would you turn to page 32 of the interview and read the highlighted questions and answers on that page, please.

Mr. WHITE-SPUNNER. Question from Weingarten: "Do you recall any knowledge of the case, meaning the Fairchild case, while you were dealing with Wiley Fairchild?"

Answer: "No."

Question: "And he certainly never brought it up?"

Answer: "Not to my recollection. I think I would recall that".

Mr. DANNEMEYER. Now please turn to page 33 of the interview, there, in exhibit 3, and if you could read from the top of the page, after Mr. Weingarten says "And I think that people refer to him as Drew," through the highlighted portion.

Mr. WHITE-SPUNNER. Weingarten: "And I think that people refer to him as Drew."

Nixon: "When you said the [inaudible] Fairchild, I didn't know what in the world you were talking about, or who."

Weingarten: "I think they call him that, and I think——."

Nixon: "And I, I don't know him by any name. I don't know him. Never met him. Don't know what he looks like."

Weingarten: "Never met him?"

Nixon's answer: "No."

Weingarten: "Never saw him?"

Answer: "No."

Weingarten: "Does he work with his father?"

Nixon: "I have no idea. Didn't even know he existed, except from what I read about that, and what you just told me. Absolutely no."

Mr. DANNEMEYER. Turn, please, to page 37 of the interview, and read for us Judge Nixon's statement, highlighted at the top of the page.

Mr. WHITE-SPUNNER. Nixon: "Well, I don't know about that part of it, but all I know is nothing was done, or nothing was ever mentioned about Wiley Fairchild's son, and I defy anybody to—and I say defy—I don't mean—unintelligible—but I challenge anybody to show any connection of anything I've ever done in connection with Wiley Fairchild's son's case. I certainly would—unintelligible—to begin with, and if I even suspected something like that was going

on, I certainly wouldn't have invested, or have any dealings. Absolutely."

Mr. DANNEMEYER. Please turn to page 43 of the interview and read to us the highlighted portion.

Mr. WHITE-SPUNNER. Weingarten: "Believe me. At this point we're not suggesting that there was impropriety in the U.S. Attorney's Office, or that there was impropriety by Mr. Holmes. I mean, we have an allegation, and always, in these cases, our fervent hope, that there is a logical, reasonable, legitimate explanation for all of these events, and—and we're at the inception of it."

"And one of the reasons we came to you is because we're not going to be scurrying around your neighborhood and not tell you about it."

Nixon: "Right. Well, I'm puzzled. I just don't know anything about it. I'm learning something about it now."

Weingarten: "OK. So I'm—just to complete the picture——"

Nixon: "That's what I was—that's what I wanted to ask you—what allegation. I've never heard, you know, never had the case, never heard about the case except what I told you, and I certainly had nothing to do with it."

Mr. DANNEMEYER. Please turn to page 47 of the interview and read for us the highlighted portion, carrying over to page 48 of the interview.

Mr. WHITE-SPUNNER. Nixon: "I understand, but regardless, what connection have I had with Fairchild's son's case? Isn't that the bottom line?"

Weingarten: "It, it basically——"

Nixon: "I mean——"

Weingarten: "Could, could well be the bottom line."

Nixon: "Yeah. What, what——"

Weingarten: "And that's why——"

Nixon: "Could I have conceivably done?"

Weingarten: "Well, that's why I had to ask you."

Nixon: "To influence a case? I certainly didn't do a thing in the world. I don't know a thing about—but what could I have done?"

Weingarten: "Well, I mean, I don't know what you could have done. I mean it——"

Nixon: "As United States District Judge."

Weingarten: "If someone wanted to use their imagination, I suppose they, they could think of things, and, and I—that's why we asked you the question, did Bud Holmes ever talk to you about the case?"

Nixon: "Oh, no."

Weingarten: "The answer is no."

Mr. DANNEMEYER. Now, Mr. White-Spunner, if we could go through tab B of exhibit 3, the excerpts from Judge Nixon's grand jury testimony. You've already read for us the testimony on pages 47 and 48. If you could turn now to page 55 of the grand jury testimony and begin at line nine of page 55, so that the highlighted portion on page 56 will be more understandable.

Mr. WHITE-SPUNNER. Question: "February 1980, the deal is cut. What would have caused you to meet with Wiley Fairchild again before the effective date of the transfer?"

Answer: "I don't know of any reason. That's why I doubt that I did, but I——"

Question: "I don't mean to be obtruse [sic] but——"

Answer: "You're not."

Question: "How many meetings are we talking about?"

Answer: "All together?"

Question: "Yes."

Answer: "I don't know. There was more than—more than two. I don't think there was as many as five, or four."

Question: "Just——"

Answer: "Somewhere in that neighborhood. I'd say two to five, probably."

Question: "If the first meeting——"

Answer: "That's my best guess."

Question: "If the first meeting produced the deal, what would the other meetings have been for?"

Answer: "I met with him several times. One time he told me that he thought he was over, maybe overcharging me for these, and would maybe put me in another later. He mentioned something about the name of a well was—I don't know—remember when this was. It had something to do with the name 'school' in the property. But he never did, and there was never any mention of it."

"And as I say, I don't know of any reason I would have met with him after the transaction was finalized in the first part of 1981, but I can't say for sure. It's possible. You're asking me about—I, I don't like to keep repeating it, but three or four years ago—and I'm trying to reconstruct this to the best of my recollection and knowledge."

Mr. DANNEMEYER. I have no further questions of this witness, Mr. Chairman. Thank you very much.

The CHAIRMAN. Mr. Stewart, cross examination.

Mr. EDWARDS. Mr. Chairman.

The CHAIRMAN. Yes, Mr. Edwards.

Mr. EDWARDS. The Managers will have to go to the House for a vote in the chamber. We won't be more than ten minutes.

The CHAIRMAN. Can we continue with the cross examination with Mr. Baron here for——

Mr. EDWARDS. Yes, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Mr. STEWART. Good morning, Mr. White-Spunner.

Mr. WHITE-SPUNNER. Good morning.

The CHAIRMAN. Mr. White-Spunner, pull that microphone closer. I know it's hard to deal with the books and the microphone but until you need the books, that close to you.

CROSS EXAMINATION

Mr. STEWART. I just want to cover a couple of things right at the outset. I don't believe this will take so long.

You read some excerpts from the interview in April 1984 with Judge Nixon. Now Judge Nixon was never indicted for anything in connection with that, right? For that interview?

Mr. WHITE-SPUNNER. I don't believe so. No.

Mr. STEWART. Well, you can look at the indictment, if you like, but you don't remember any charge concerning that?

Mr. WHITE-SPUNNER. I don't remember. No.

Mr. STEWART. That's something that's just come up here. Your case didn't involve anything concerning that interview?

Mr. WHITE-SPUNNER. No, not to my recollection.

Mr. STEWART. Let me just start at the beginning with Mr. Jarvis. You found out, ultimately, that this anonymous telephone call, that was Skip Jarvis, right?

Mr. WHITE-SPUNNER. Yes.

Mr. STEWART. And you tape recorded those phone calls after the first one, didn't you?

Mr. WHITE-SPUNNER. Yes.

Mr. STEWART. And Mr. Jarvis told you that Judge Nixon had been paid off to shut the *Drew Fairchild* case down on the Federal level, isn't that right?

Mr. WHITE-SPUNNER. Basically, that was his allegation.

Mr. STEWART. And have it handled by Bud Holmes? That's what Mr. Jarvis was saying?

Mr. WHITE-SPUNNER. Yes.

Mr. STEWART. So in exhibit 18, which is one of those transcripts—our exhibits, which are in the green books—we've got that transcript at page 16, where he says that, and that's your recollection, too? That was his allegation?

Mr. WHITE-SPUNNER. Yes.

Mr. STEWART. Now through the investigation you got to know Mr. Jarvis reasonably well, didn't you?

Mr. WHITE-SPUNNER. Yes. I did.

Mr. STEWART. And you worked pretty closely with him throughout the investigation?

Mr. WHITE-SPUNNER. Yes.

Mr. STEWART. He was a pretty enthusiastic participant in this investigation, wasn't he?

Mr. WHITE-SPUNNER. I guess in a manner of speaking. Yes.

Mr. STEWART. He's a guy who kind of enjoyed "cloak and dagger" stuff, isn't that right?

Mr. WHITE-SPUNNER. I couldn't make that determination. You'd have to ask him.

Mr. STEWART. Well, at one point didn't he become convinced, and complain to you that Wiley Fairchild had tried to kill him?

Mr. WHITE-SPUNNER. Yes. Someone had. I don't know that he specifically said Wiley Fairchild, but he feared for his life.

Mr. STEWART. Yes. Didn't he say that Wiley Fairchild had killed his father, too?

Mr. WHITE-SPUNNER. I don't remember that.

Mr. STEWART. Well, isn't it fair to say that as time went on, you discovered that Skip Jarvis wasn't a very reliable witness?

Mr. WHITE-SPUNNER. I cannot say that. No.

Mr. STEWART. Well, let me ask it a different way. Did you discover, as time went on, that Mr. Jarvis appeared to be trying to force Wiley Fairchild out of Fairchild Construction Company?

Mr. WHITE-SPUNNER. To force Wiley Fairchild what?

Mr. STEWART. Out of Fairchild Construction Company? Out of the family business?

Mr. WHITE-SPUNNER. I never got that impression.

Mr. STEWART. Let me try one other thing, then. Do you remember agreeing to meet with Wiley's relatives, the fellow-owners of that business, to explain that some of Mr. Jarvis' charges were unfounded?

Mr. WHITE-SPUNNER. I don't specifically remember that, but it could be. Yes. There were some comments on that regard.

Mr. STEWART. Well, if you could look in the green book in front of you there—and I believe it's in Volume II, which is the thinner one, the one I think you have there—exhibit 53, respondent's exhibits.

Mr. Chairman, I understand from Mr. Harvey that these were copied for the committee. I don't know if they've been distributed. We had a financial problem with the xeroxing.

The CHAIRMAN. Mr. Stewart, they are in the process of compilation.

Mr. STEWART. Well, I will proceed, Mr. Chairman.

The CHAIRMAN. Please. I think the Chairman and the Vice Chairman have them, but the truth of the matter is, the staff didn't think that we would get this far until after lunch.

Mr. STEWART. Well, I would surely appreciate—

The CHAIRMAN. We'll have them later on, but we'll follow it very closely.

Mr. STEWART [continuing]. That they are made available to everyone. Have you got exhibit 53 there?

Mr. WHITE-SPUNNER. Yes. I do.

Mr. STEWART. Now there's a cover letter there that's addressed to "Ken," and apparently signed "Skip." Was that a letter to you from Mr. Jarvis?

Mr. WHITE-SPUNNER. Yes. It was.

Mr. STEWART. The "Ken" is you?

Mr. WHITE-SPUNNER. Yes.

Mr. STEWART. And then attached to it are two letters signed by Wiley Fairchild. Do you remember seeing these letters before?

Mr. WHITE-SPUNNER. Yes. I do.

Mr. STEWART. And in that second letter, Mr. Fairchild is telling his relative, Mrs. Manasco, right at the beginning there, that Mr. White-Spooner—I guess he got your name wrong—was willing to meet with the relatives and tell them that Skip's making up stories?

Mr. WHITE-SPUNNER. That's what the letter says.

Mr. STEWART. And is that not true? You weren't willing to meet with them?

Mr. WHITE-SPUNNER. I wouldn't say I wouldn't meet with his relatives, but I don't know about, you know, saying that Jarvis was making up stories.

Mr. STEWART. Well, one of the stories that's mentioned there is that story about how Wiley Fairchild supposedly is trying to kill him, cut the brake linings on his car. Were you willing to talk to them about that allegation?

Mr. WHITE-SPUNNER. Yes.

Mr. STEWART. And you've never found any basis for that allegation?

Mr. WHITE-SPUNNER. May I testify to my best recollection of that?

Mr. STEWART. I can't ask for anything else, Mr. White-Spunner.

Mr. WHITE-SPUNNER. OK. As I recall, there was no evidence of any brake linings being cut, but there was a different fluid other than brake fluid found in the brake linings. Now whether that would have an effect on the braking capacity of a car, I don't know. I suspect it might.

Mr. STEWART. Did you think Wiley Fairchild had done it? Did you find any evidence Wiley Fairchild had done it?

Mr. WHITE-SPUNNER. No. We didn't.

Mr. STEWART. Let's go back to that first letter there. That's a letter from Skip Jarvis to you. Could you read the last paragraph of his letter, right before he signs it.

Mr. WHITE-SPUNNER. "By the way, four down. Wiley, Drew, Royals and Holmes. I am eager to go after the big prize."

Mr. STEWART. What did you understand him to mean—"four down, Wiley, Drew, Royals and Holmes"?

Mr. WHITE-SPUNNER. I believe at that point Wiley, Drew, Royals and Holmes may have already pled—I'm not—maybe I don't recall right, but I think that's what it was.

Mr. STEWART. Who was the "big prize"?

Mr. WHITE-SPUNNER. You'll have to ask Mr. Jarvis that.

Mr. STEWART. Did you have any clue as to who the "big prize" was when you read that letter?

Mr. WHITE-SPUNNER. I could guess who he was thinking about, but I think that that was his words, not mine.

Mr. STEWART. All right. It was Judge Nixon, wasn't it?

Mr. WHITE-SPUNNER. That's your words, not mine.

Mr. STEWART. Did you think he meant Judge Nixon?

Mr. WHITE-SPUNNER. I gave it no real thought. This was an unsolicited letter. The man was using his terminology, and, you know, the letter really—I didn't attach that much importance to it.

Mr. STEWART. And you never used that term?

Mr. WHITE-SPUNNER. Never.

Mr. STEWART. No other investigator or prosecutor ever used that term?

Mr. WHITE-SPUNNER. Never heard them use that term.

Mr. STEWART. You never heard the term "judge-busters"?

Mr. WHITE-SPUNNER. I never heard that.

Mr. STEWART. Never heard it once?

Mr. WHITE-SPUNNER. Never heard it once. In fact this is the first time I've ever heard that in my career.

Mr. STEWART. Let's talk now—you can put that aside for right now—about how you got into the investigation. I think you confirmed that Mr. Jarvis was asking, and reporting—I'm sorry, not "asking"—he was reporting that Judge Nixon supposedly had steered the case away from the Federal prosecutors into Bud Holmes' hands. Correct?

Mr. WHITE-SPUNNER. I think that may be correct. Yes.

Mr. STEWART. And so the question you've got to look at is, how did the Federal prosecution get shut down? How did that *Drew Fairchild* case end up in Bud Holmes' hands? Correct?

Mr. WHITE-SPUNNER. Yes.

Mr. STEWART. All right. And you determined that the Federal Government had prosecuted other defendants in the case?

Mr. WHITE-SPUNNER. That's right.

Mr. STEWART. All right. And there were four of those?

Mr. WHITE-SPUNNER. Yes.

Mr. STEWART. All right. And there was no obvious reason for the Federal Government not to have prosecuted *Drew Fairchild*?

Mr. WHITE-SPUNNER. That seemed to be the case. Yes.

Mr. STEWART. Now did you discover that the Mississippi Bureau of Narcotics did not like to send its cases to Bud Holmes?

Mr. WHITE-SPUNNER. They did not like to what?

Mr. STEWART. Send their cases to Bud Holmes.

Mr. WHITE-SPUNNER. Yes. I think there was some feeling on the part of some of their agents but not necessarily as a policy matter for the entire Bureau of Narcotics.

Mr. STEWART. Their preference was to have the cases handled federally, rather than by Mr. Holmes?

Mr. WHITE-SPUNNER. You'd have to ask them that.

Mr. STEWART. Wasn't that reported to you by people like Captain Jim Kelly?

Mr. WHITE-SPUNNER. I would get that impression from talking to him, that one individual. Yes.

Mr. STEWART. Now you also determined that Mr. Holmes and U.S. Attorney George Phillips were close friends and associates?

Mr. WHITE-SPUNNER. That's true.

Mr. STEWART. They had worked together in Hattiesburg? They were both from the same town?

Mr. WHITE-SPUNNER. Yes. That's right.

Mr. STEWART. Mr. Phillips, who was then U.S. Attorney, had been county attorney when Mr. Holmes was district attorney in Hattiesburg?

Mr. WHITE-SPUNNER. I believe that's correct. Yes.

Mr. STEWART. And Mr. Holmes had supported George Phillips to become U.S. attorney?

Mr. WHITE-SPUNNER. I don't know that for a fact.

Mr. STEWART. All right. Now, this question of how the case ended up in Bud Holmes' hands continued to be the focus of your investigation when you talked to Mr. Jarvis again, isn't that right?

Mr. WHITE-SPUNNER. I wouldn't say that was "the" focus of the investigation. I don't know, but that certainly was something that we were interested in. Yes.

Mr. STEWART. I'd ask you to turn in the other volume, the larger one, to exhibit 21. Again, Mr. Chairman, these are our volumes, and I don't know that the members of the committee have them. This is our first volume. It's exhibit 21. I do apologize for this confusion.

The CHAIRMAN. We've got them now.

Mr. STEWART. Do you have exhibit 21 there?

Mr. WHITE-SPUNNER. Yes. I do.

Mr. STEWART. Could you turn to page 28. This is a transcript of a phone call you had with Mr. Jarvis in February 1984, correct?

Mr. WHITE-SPUNNER. February 6, 1984. Yes.

Mr. STEWART. And he's still anonymous? He's still not telling you his name?

Mr. WHITE-SPUNNER. True.

Mr. STEWART. "WS" stands for you, I take it? White-Spunner?

Mr. WHITE-SPUNNER. Yes. It does.

Mr. STEWART. Can you read, right at the top there, where it starts, White-Spunner, "OK," and then down through your second statement there.

Mr. WHITE-SPUNNER. "OK. Then we know that in November of 1980, just as August, September, October—three months later—Bill Porter and *Drew Fairchild* go to the U.S. Attorney's Office in Jackson, and they arrive at what is known as a memorandum of understanding, which in effect is kind of a plea agreement, and that is signed. OK? Right.

"OK. Then at some—this is another thing that we've got to try to explore. At some point in the not-too-distant future, after that November meeting in the U.S. Attorney's Office, that the U.S. Attorney turn the entire case over to Bud Holmes."

Mr. STEWART. Can you read your next statement there, too.

Mr. WHITE-SPUNNER. "Right. Keep talking. And then it was—then I think the next date we have is something like August of 1981 when I—it goes to the grand—we could document that part, but what we're trying to find out and what we can't find out right now is what prompted the U.S. Attorney to suddenly turn this matter over to Bud Holmes when the U.S. Attorney appeared to have the whole case wrapped up.

"See, that's a question in my mind. You know, I mean, he had the whole case wrapped up, because number one, he had two of the guys had already pled guilty and been sentenced in Federal court before Judge Cox. The third guy, Fairchild, had already signed a plea agreement with the U.S. Attorney's Office, and he agreed to testify, I think, against Watkins or something.

"So then it gets back down to—for some reason or other, the U.S. Attorney decided that he didn't want to proceed with it. He wanted to send it back."

Mr. STEWART. Can you just read the next couple of exchanges.

Mr. WHITE-SPUNNER. "Unidentified male. Now do you understand me? Is that what the judge did? Now do you understand why my—why all of a sudden my ears perked up and I started—sure."

Mr. STEWART. OK. I'm sorry. You should read the last sentence.

Mr. WHITE-SPUNNER [continuing]. "Putting two and two together."

Mr. STEWART. Yes. So that was one of the things Mr. Jarvis was still telling you, and you were still telling him, then, that that was a focus of your investigation?

Mr. WHITE-SPUNNER. Sure. I wouldn't say it was "the" focus but it certainly was something we were interested in. Yes.

Mr. STEWART. All right. Now when you first met with Wiley Fairchild—this is in February 1984. You met with Wiley Fairchild at the beginning of the investigation in early April 1984, correct?

Mr. WHITE-SPUNNER. The record would reflect when we first met with him. I think that's true.

Mr. STEWART. And that was your first kind of open interview in the case, wasn't it?

Mr. WHITE-SPUNNER. Yes. It was.

Mr. STEWART. All right. The first time you'd come out in public, really, and say we're investigating this issue, correct?

Mr. WHITE-SPUNNER. Yes. Outside of agents searching records to come up with these oil leases, that's—

Mr. STEWART. And one of the important questions you want answered, when you go see Mr. Fairchild, is how Drew's case got steered from Federal prosecutors to State prosecutors, isn't that right?

Mr. WHITE-SPUNNER. I don't recall that. I wouldn't know that Mr. Fairchild would have that particular information.

Mr. STEWART. Well let's look at exhibit 23, then, right before you, and that's your memorandum of your interview with Mr. Fairchild on April 11, correct?

Mr. WHITE-SPUNNER. That's true.

Mr. STEWART. So you conducted the interview, in part, and then prepared this memorandum, correct?

Mr. WHITE-SPUNNER. That's right.

Mr. STEWART. I'd like to read to you—and see if this refreshes your recollection—what it says there, beginning in the first paragraph.

"Fairchild was advised that FBI investigation had left unanswered one or more crucial questions specifically as to why the Office of the U.S. Attorney had turned over the prosecution of *Drew Fairchild* and subject Watkins in the narcotics case to Forest County District Attorney Bud Holmes, when the U.S. Attorney's Office appeared to have mainly handled the entire case satisfactorily through the Federal court system.

"Fairchild was advised that this point alone strongly implied that some pressure or other influence had been applied on unidentified parties in the Federal sector to turn the case over to local authorities."

So that was a crucial question that you were investigating then, isn't that right?

Mr. WHITE-SPUNNER. Yes. But we were not asking him that. We were making a statement to him.

Mr. STEWART. But it was a crucial question you were investigating?

Mr. WHITE-SPUNNER. It was something—yes, we were investigating that.

Mr. STEWART. Well, your word was crucial? You're not going to back off from that, are you?

Mr. WHITE-SPUNNER. That's your word.

Mr. STEWART. No. It's in here.

Mr. WHITE-SPUNNER. Oh, it is? "Crucial?"

Mr. STEWART. Yes, sir.

Mr. WHITE-SPUNNER. OK. No. I won't back off of what's here in the record. Definitely not.

Mr. STEWART. You told Mr. Fairchild it was a "crucial" question?

Mr. WHITE-SPUNNER. OK. Yes.

Mr. STEWART. And you meant it? You weren't lying to Mr. Fairchild?

Mr. WHITE-SPUNNER. No, sir.

Mr. STEWART. So now we've got, up through April 1984, a constant theme, in your calls with Mr. Jarvis, and then you go see Mr.

Fairchild. How did the case get to Bud Holmes? That's a constantly theme here. Correct? Is that correct?

Mr. WHITE-SPUNNER. Yes.

Mr. STEWART. Now I want to switch a little, now, and ask you about the event that prompted this interview, the immediate precipitating event maybe is the best way to describe it. Wiley Fairchild essentially sent a complaint in to the FBI, didn't he?

Mr. WHITE-SPUNNER. Yes. He complained to the U.S. Attorney's Office.

Mr. STEWART. Yes. And do you remember what the complaint was?

Mr. WHITE-SPUNNER. No. I don't recall exactly what the complaint was.

Mr. STEWART. Do you recall that he was being blackmailed?

Mr. WHITE-SPUNNER. That could have been the word. Yes.

Mr. STEWART. Well, let's look at exhibit 22. This is your memorandum, again, correct?

Mr. WHITE-SPUNNER. It's a different one. You know, certainly another interview.

Mr. STEWART. It's another one by you?

Mr. WHITE-SPUNNER. Yes.

Mr. STEWART. And it's about an interview that you attended with Mr. Fairchild?

Mr. WHITE-SPUNNER. That's correct.

Mr. STEWART. And it's the day before the memorandum we were just looking at?

Mr. WHITE-SPUNNER. Yes.

Mr. STEWART. The statement is made—second sentence there—that Mr. Fairchild—and I'm quoting—"was advised of the identities of the interviewing agents, and further, that a friend of Fairchild's, John Baltar—"

Now you knew Mr. Baltar, didn't you?

Mr. WHITE-SPUNNER. I don't think I'd met him at this point. No. I'm sure I did not even know who he was at this point.

Mr. STEWART. But you discovered he worked for Mr. Fairchild?

Mr. WHITE-SPUNNER. Yes. Right.

Mr. STEWART. "That Mr. Baltar had reported that Fairchild had information indicating he was being extorted or blackmailed by unidentified persons." Does that refresh your recollection, now, that it was a blackmail complaint that brought you to Wiley Fairchild's door?

Mr. WHITE-SPUNNER. Yes. That's right.

Mr. STEWART. Now during this interview, do you recall that Mr. Fairchild described to you several incidents that he thought indicated he was being blackmailed?

Mr. WHITE-SPUNNER. I would have to re-read the interview, but, you know, it's a matter of record here. I haven't read this interview in some years.

Mr. STEWART. Well, do you recall Mr. Fairchild complaining about Bill Porter coming after him for a fee?

Mr. WHITE-SPUNNER. Yes. I believe so.

Mr. STEWART. And that he thought Porter was in cahoots with Bud Holmes somehow, in Drew's case, and they were after him because of his money?

Mr. WHITE-SPUNNER. Yes.

Mr. STEWART. I'm done with that, for right now. Now, about two weeks after this, after that memo and interview we were just looking at, which is April 10—I'm sorry, it's only one week—you gave Skip Jarvis a tape recorder and a secret microphone that he could conceal on his person, and sent him off to talk to Wiley Fairchild, correct?

Mr. WHITE-SPUNNER. The FBI did. I did not, but I knew that that was happening. Yes.

Mr. STEWART. And you have a transcript of that conversation, was made, wasn't it?

Mr. WHITE-SPUNNER. I believe there was one. Yes.

Mr. STEWART. On exhibit 25, which is before you, in that same book, that's a transcript of that conversation. Do you recognize it?

Mr. WHITE-SPUNNER. It's a transcript but there's nothing to identify it as being that particular conversation, but I'll accept that it is, if you say so.

Mr. STEWART. It was marked as an exhibit at the trial.

Mr. WHITE-SPUNNER. Yes. Exhibit 16A? Is that what it is?

Mr. STEWART. That's what it was marked as at the trial.

Mr. WHITE-SPUNNER. OK.

Mr. STEWART. Do you recall that during that conversation with Skip Jarvis, Wiley Fairchild insisted there was nothing wrong with the sale of the oil interest to Judge Nixon?

Mr. WHITE-SPUNNER. I don't recall that, but I accept that that would be his—might have been his reply.

Mr. STEWART. So if we were to look at page 2, and you were to read that there.

[Pause.]

Mr. WHITE-SPUNNER. I'm sorry. I turned to page 3.

Mr. STEWART. Right at the bottom.

The CHAIRMAN. Mr. Stewart, I'm not going to limit you right now, but I would just remind you that in this cross examination there is no relevance, that I see, to the Articles of Impeachment as charged. The question of oil and gas interests, their legality or illegality, who initiated them, has nothing to do with the articles of impeachment as charged.

Mr. STEWART. OK.

The Chairman. So please accept that as a reminder and try to move on.

Mr. STEWART. Mr. White-Spunner, do you recall that during this secretly taped conversation with Skip Jarvis, that Wiley Fairchild insisted over and over and over again that he had been blackmailed?

Mr. WHITE-SPUNNER. That could be in here, but, again, I say, I have not seen this in over three years, so I can't—

Mr. STEWART. You didn't look back over it before today?

Mr. WHITE-SPUNNER. No. I did not.

Mr. STEWART. So, if the fact that at pages 5, 6, 10, 18 and 19 he says, "I'm being blackmailed by Bud Holmes," you wouldn't quarrel with that, would you, that that was what he said?

Mr. WHITE-SPUNNER. If that's in fact in here, no, I would not quarrel with anything that's in there.

Mr. STEWART. So at the bottom of page five, when he says: "I figure it was blackmail from the word go," or up at the top of page five, he says, "It was blackmail from the word go," again. Or page six. He says, "I just think it's blackmail, and Carroll Ingram is deep into it as anybody."

You understood fully, from this tape, and your interview with Mr. Fairchild, that he had blackmail on the brain, didn't he?

Mr. WHITE-SPUNNER. I would accept that.

Mr. STEWART. Now Mr. Jarvis also tape recorded a telephone conversation with Wiley Fairchild that evening, didn't he?

Mr. WHITE-SPUNNER. I believe he did. Yes.

Mr. STEWART. And that's exhibit 26 here. That's a short transcript, and that just refers to the oil transaction. Do you recall that?

Mr. WHITE-SPUNNER. Yes, I remember when he did this, yes.

Mr. STEWART. All right. I'm not going to ask any substantive questions about that.

Now, let's get to the interview with Judge Nixon. That happened on April 19. That's the date on the tape. Do you recall that?

Mr. WHITE-SPUNNER. Yes.

Mr. STEWART. OK. Now, that's the day after Mr. Jarvis tapes Wiley Fairchild; correct?

Mr. WHITE-SPUNNER. Yes.

Mr. STEWART. OK. And that's a week, nine days after Mr. Fairchild is interviewed by you and says he's being blackmailed; correct?

Mr. WHITE-SPUNNER. Yes.

Mr. STEWART. OK. And you know by now he's got blackmail on the brain. That's his one obsession. He is being blackmailed. Correct?

Mr. WHITE-SPUNNER. These are your words, but, yes, I knew——

Mr. STEWART. You agree, Mr. White-Spunner?

Mr. WHITE-SPUNNER. I agree with you, yes.

Mr. STEWART. OK. And you didn't ask him when you talked to Judge Nixon if he knew anything about blackmail, did you?

Mr. WHITE-SPUNNER. During the interview, Judge Nixon was questioned by the Public Integrity attorney. I was there as a witness.

Mr. STEWART. You asked some questions, too, of course.

Mr. WHITE-SPUNNER. There may have been one or two questions I asked that were not pertinent to those.

Mr. STEWART. Nobody in the room asked him any questions about blackmail, did they?

Mr. WHITE-SPUNNER. I don't recall that there were any questions about blackmail, no.

Mr. STEWART. Why not?

Mr. WHITE-SPUNNER. That, again, you would have to address that question to the attorney that asked the questions.

Mr. STEWART. Well, did you talk to him beforehand about what was going to be questioned about the areas of investigation? I mean, he wasn't at the interview with Wiley Fairchild, was he?

Mr. WHITE-SPUNNER. No, he wasn't.

Mr. STEWART. OK. So you have to brief him on that.

Mr. WHITE-SPUNNER. Oh, sure. He was briefed.

Mr. STEWART. OK. And you talked over with him what you were going to do with Judge Nixon while you were in there, didn't you?

Mr. WHITE-SPUNNER. No, we didn't discuss what—you know, the attorney was going to question him.

Mr. STEWART. So you wouldn't know that the failure to ask him about the blackmail allegation, you don't know if whether that was just an oversight because the lawyer didn't think that there was any connection between the two, do you?

Mr. WHITE-SPUNNER. I have no reason to.

Mr. STEWART. So you don't know if he left it out because he was trying to trap Judge Nixon on the other side? You don't know if it's intentional or inadvertent?

Mr. WHITE-SPUNNER. That's correct.

Mr. STEWART. This may be a tough question. I don't want to be unfair about it, Mr. White-Spunner, but let me just direct you to exhibit 29 which is an FBI memo of an interview with Bud Holmes, which is dated about a week after the interview with Judge Nixon. You were not present, apparently, from this interview, and that's why I want to preface this that if you can't answer the question because you weren't there, that's fine. But I suspect you would have seen this memorandum.

Mr. WHITE-SPUNNER. I'm sure I would have, yes.

Mr. STEWART. OK. In this memorandum, there's no indication that anybody asked Bud Holmes if he had been involved in black-mailing or shaking down Wiley Fairchild. Do you know why?

Mr. WHITE-SPUNNER. No. I wouldn't have any reason why.

Mr. STEWART. I want to ask you a little bit, though, just to slip back to the interview with Judge Nixon. Now, he made no secret of the oil properties that he bought from Wiley Fairchild?

Mr. WHITE-SPUNNER. No.

Mr. STEWART. OK. He told you the price he'd paid for the oil properties?

Mr. WHITE-SPUNNER. I believe he did.

Mr. STEWART. OK. He told you that two of the properties had turned out pretty well.

Mr. WHITE-SPUNNER. He could well have.

Mr. STEWART. He also told you there was something unorthodox about the transactions. He couldn't quite dredge it up while you were in there. Do you remember that?

Mr. WHITE-SPUNNER. There could have been some mention of that.

Mr. STEWART. And that's the kind of comment that would catch an investigator's attention. I mean, you're looking for something unorthodox, aren't you?

Mr. WHITE-SPUNNER. Certainly.

Mr. STEWART. OK. So someone who's trying to conceal something ordinarily wouldn't tell you that it was an unorthodox transaction, would he?

Mr. WHITE-SPUNNER. I wouldn't know.

Mr. STEWART. And Judge Nixon also tells you at page 25—it's in the black book if you want to see it in exhibit 1. The black book. I'm sorry. It gets confusing. He even volunteers to you that Wiley Fairchild had mentioned to him maybe they'd do another investment. Do you recall that he did that?

Mr. WHITE-SPUNNER. Yes.

Mr. STEWART. OK. So he's not concealing that. He's not ashamed of his relationship with Wiley Fairchild, is he?

Mr. WHITE-SPUNNER. I wouldn't—I'm not the person to answer that.

Mr. STEWART. OK. Let me ask you to turn to that exhibit 1.

Mr. WHITE-SPUNNER. In the black book?

Mr. STEWART. Yes, sir. I'm sorry.

Mr. WHITE-SPUNNER. Is this 25?

Mr. STEWART. Page 29.

Mr. WHITE-SPUNNER. Page 29 of which exhibit?

Mr. STEWART. Exhibit 1.

Mr. WHITE-SPUNNER. Exhibit 1. Excuse me. Page 29?

Mr. STEWART. Yes, sir.

Mr. WHITE-SPUNNER. OK.

Mr. STEWART. This was a passage that Mr.——

The CHAIRMAN. What is this exhibit?

Mr. STEWART. Exhibit 1 in the House managers——

The CHAIRMAN. No, what is it?

Mr. STEWART. It's the transcript of the interview.

The CHAIRMAN. Who's talking?

Mr. STEWART. This is the transcript of the interview with Reid Weingarten, the prosecutor; Judge Nixon; and Mr. White-Spunner speaks occasionally. The W refers to Weingarten, the N to Nixon.

Now, do you recall—beginning back on page 28, can you read that passage starting where Mr. Weingarten says, "I tell you that, uh, the airport bust"? Read that over on to 29.

Mr. WHITE-SPUNNER. "Weingarten: I tell you that, uh, the airport bust was August 1980, that, I tell you that originally the case was a Federal case, got passed to Holmes."

"Nixon: How did it get passed? What happened?"

"Weingarten: Well——"

"Nixon: I don't know anything about it."

"Weingarten: Frankly, that's——"

"Nixon: I'm, I'm interested. I'm curious."

"Weingarten: Frankly, that's a very good question, and it's quite a, uh, what we're looking at here, and I think it's fair to say that with the present administration there's a strong policy toward the Federal Government sharing its cases with local prosecutors, spread the wealth around so that"——

Mr. STEWART. OK. Why don't you hang on there?

Now, that statement by Mr. Weingarten, that's entirely consistent with what we've covered before, which you told Mr. Fairchild that that was one of the crucial questions you were looking at, which is how the case got from Federal prosecutors to State prosecutor Bud Holmes. Correct?

Mr. WHITE-SPUNNER. Yes.

Mr. STEWART. OK. So you told that fairly. You told that to Wiley Fairchild, and fairly you told it to Judge Nixon. That's one of the crucial questions you're looking at.

Mr. WHITE-SPUNNER. I guess, yes.

Mr. STEWART. Now, do you recall that as the interview went on, Judge Nixon was very interested in this question and curious about it? Do you recall he asked you more about it?

Mr. WHITE-SPUNNER. Yes, I believe he did. Yes.

Mr. STEWART. OK. Do you recall at page 32, when you read this passage—I believe you read it. I may misremember. Judge Nixon says, "I never did know it was a Federal case. I didn't know it had ever been in the Federal system." So he's focusing on this issue, isn't he, the Federal case, how it gets to the State case?

Mr. WHITE-SPUNNER. Seems to be, yes.

Mr. STEWART. OK. Now, up at page 43, you read some of this passage, but you didn't read all of it.

Now, you've already read the passage. Have you got that there?

Mr. WHITE-SPUNNER. Page 43?

Mr. STEWART. Yes, sir. OK. You read part of the passage, I believe, about where Judge Nixon says, "I'm puzzled," after Mr. Weingarten's statement?

Mr. WHITE-SPUNNER. Yes, I—

Mr. STEWART. Let me back up. I'm being confusing, and I don't mean to be.

Mr. WHITE-SPUNNER. No, I'm with you right now.

Mr. STEWART. Let's start with White-Spunner, where you speak in the middle there, the second statement, "And the next significant thing."

Mr. WHITE-SPUNNER. OK.

Mr. STEWART. Can you read that?

Mr. WHITE-SPUNNER. Do you want me to read that?

Mr. STEWART. Yes.

Mr. WHITE-SPUNNER. How far down do you want me to go?

Mr. STEWART. Just read that.

Mr. WHITE-SPUNNER. "And the next significant thing that happened is he's indicted by a Forrest County grand jury in August 1981. Sometime between November 1980 and August 1981, that case on *Drew Fairchild* and another defendant who was a fugitive was passed down to Bud Holmes for handling."

Mr. STEWART. OK. So that's that same crucial question you're looking at; correct?

Mr. WHITE-SPUNNER. Yes.

Mr. STEWART. And then later on, down when Judge Nixon speaks, he says he doesn't know anything about that; correct?

Mr. WHITE-SPUNNER. That's right.

Mr. STEWART. OK. And as you go over—you read this passage, I think, the bottom of page 45—I'm sorry. At the top, Judge Nixon says, "Obviously, you said he was indicted in the State." The prosecutor says, "It was never presented federally." Again, he's focusing on this question. How did it get from the Federal court to the State court, correct?

Mr. WHITE-SPUNNER. Yes.

Mr. STEWART. OK. And then at the bottom, he says, "I don't know what influence the chief U.S. District Judge would have with this case?" And Mr. Weingarten says, "Well, he," and then on page 45, "When was—when was it transferred to the State? I mean, was it presented to the State, or when was he indicted?" He's still focused on this issue that you focused him on; correct?

Mr. WHITE-SPUNNER. True.

Mr. STEWART. OK. And he's right to focus on it because it's one of the crucial questions you're investigating?

Mr. WHITE-SPUNNER. Seemed to be, yes.

Mr. STEWART. OK. It's obvious from the transcript itself. I want to make clear to this subcommittee, of course. You only read a few little snippets, and that's all we've covered here out of that interview; isn't that right?

Mr. WHITE-SPUNNER. True.

Mr. STEWART. OK. The same is true for the grand jury.

Mr. WHITE-SPUNNER. That's correct.

Mr. STEWART. OK. So the committee has no idea what was said in the rest of the grand jury, unless they've read it themselves.

Mr. WHITE-SPUNNER. Unless they've read it themselves, that's right. They have it available to them to read.

Mr. STEWART. OK. Let me ask you about that interview, though. In the background, before you went to see Judge Nixon, you didn't call ahead and say, "Judge Nixon, we want to talk to you about Wiley Fairchild and your investment"? I mean, he had no real notice of what you were going to ask him about, did he?

Mr. WHITE-SPUNNER. The interview was arranged by the special agent in charge, Weldon Kennedy, and I don't know whether he talked directly to Judge Nixon or his secretary or what was said during that conversation.

Mr. STEWART. Well, all right. Let's say when you get there and you walk in, you say, "We want to interview you about this"—the tape doesn't start right away, does it?

Mr. WHITE-SPUNNER. No. And I don't recall the exact conversation that Mr. Weingarten had. It was the usual greetings and introductions. Judge Nixon knew who I was. He did not know Weingarten, and they chatted about their mutual legal backgrounds, I guess. But it was just fairly normal.

Mr. STEWART. OK. And Judge Nixon agreed to be interviewed. He didn't have any problem with that, did he?

Mr. WHITE-SPUNNER. No problem at all.

Mr. STEWART. OK. And he agreed to be tape recorded, you've already testified.

Mr. WHITE-SPUNNER. Yes, right. As long as we promised to give him a transcript, which he got.

Mr. STEWART. OK. Now, following that interview, you got a bunch of other evidence. You continued to gather the documentary evidence; correct?

Mr. WHITE-SPUNNER. Yes, we did.

Mr. STEWART. All right. So you got the oil properties, the deeds. You got the deeds from the public land records?

Mr. WHITE-SPUNNER. Yes.

Mr. STEWART. OK. And you got the promissory notes and other records from Fairchild Construction?

Mr. WHITE-SPUNNER. Yes.

Mr. STEWART. And you got the canceled checks from Fairchild Construction; correct?

Mr. WHITE-SPUNNER. Yes.

Mr. STEWART. OK. So there was no cash involved. This was all documented as a transaction.

Mr. WHITE-SPUNNER. Yes.

Mr. STEWART. OK. Now, then you get into going to the grand jury, and I wanted to ask you: Do you recall whether there was

publicity in the press about this investigation before the grand jury started?

Mr. WHITE-SPUNNER. My recollection—I don't know, but I think there probably was. The press was all around.

Mr. STEWART. There was a lot of publicity, wasn't there?

Mr. WHITE-SPUNNER. There seemed to be, yes.

Mr. STEWART. OK. Were there any leaks from Government investigators that you know of?

Mr. WHITE-SPUNNER. Not that I know of.

Mr. STEWART. But you are aware that Judge Parker entered a gag order?

Mr. WHITE-SPUNNER. Yes.

Mr. STEWART. And he entered it against the FBI and the Department of Justice, telling them to control all information coming from the grand jury, didn't he?

Mr. WHITE-SPUNNER. I don't know who all it entailed, but I know that the FBI and everybody involved, and maybe even on the defense side, had to sign affidavits.

Mr. STEWART. I also wanted to ask—this is a new subject, again. You did investigate some allegations that Bud Holmes had been involved in attempting to intimidate witnesses, didn't you? This comes a little later.

Mr. WHITE-SPUNNER. If there is documents to that effect, yes, but I don't specifically recall that.

Mr. STEWART. You don't recall that Carroll Ingram reported that Mr. Holmes had come by his office?

Mr. WHITE-SPUNNER. That rings a bell, but I don't remember the specifics on that. You'd have to show me an interview—

Mr. STEWART. You don't recall—excuse me. Please finish your answer.

Mr. WHITE-SPUNNER. No, I mean, I don't—you know, I have not had access to these records in three years, and this has been pretty far from my mind.

Mr. STEWART. You don't recall that the FBI issued Mr. Ingram a tape recorder so that he could tape record any further efforts to pressure him by Mr. Holmes?

Mr. WHITE-SPUNNER. He was not issued one by me.

Mr. STEWART. So you have no recollection of that?

Mr. WHITE-SPUNNER. I have no recollection of that.

Mr. STEWART. You don't have any—

Mr. WHITE-SPUNNER. It could have happened. I mean, I, you know.

Mr. STEWART. Sure.

The CHAIRMAN. Mr. Stewart, you have been going for about 45 minutes.

Mr. STEWART. I'm about done.

The CHAIRMAN. Thank you.

Mr. STEWART. Excuse me one moment.

[Pause.]

Mr. STEWART. Of course, Mr. White-Spunner, when you say you don't remember things after three years, that's not uncommon for a witness to have trouble remembering something that's off in the past, is it?

Mr. WHITE-SPUNNER. I would imagine that's not—I've heard a lot of people say, "I don't remember what happened last week."

Mr. STEWART. Well, you just told me you don't remember something that happened three years ago.

Mr. WHITE-SPUNNER. I would stand on whatever the record is.

Mr. STEWART. OK. But you don't remember.

Mr. WHITE-SPUNNER. Not at this date, no.

Mr. STEWART. And that's what happens to witnesses every day, isn't it? Even FBI agents; isn't that right?

Mr. WHITE-SPUNNER. Possible.

Mr. STEWART. No further questions.

The CHAIRMAN. Any redirect?

Mr. KEITH. Mr. Chairman, I have a few brief questions. Since Mr. Dannemeyer was out voting, may I be permitted to handle redirect?

The CHAIRMAN. Yes.

Mr. KEITH. Thank you, sir.

REDIRECT EXAMINATION

Mr. White-Spunner, at the time of your interview with Judge Nixon, did you know one way or another whether the judge was guilty of a crime?

Mr. WHITE-SPUNNER. No, we did not.

Mr. KEITH. At the time of that interview, did you have any information of any kind indicating that Judge Nixon knew anything about the *Drew Fairchild* case or that he was involved in the case in any way?

Mr. WHITE-SPUNNER. No, we did not.

Mr. KEITH. Now, Mr. Stewart had covered with you a little bit about your initial interviews with Wiley Fairchild which took place about a week before your interview with the judge; is that correct?

Mr. WHITE-SPUNNER. Yes, that's correct.

Mr. KEITH. At any time in those initial interviews of Mr. Fairchild, did Mr. Fairchild indicate that he had spoken with Judge Nixon about his complaint of blackmail in connection with his son's case?

Mr. WHITE-SPUNNER. I don't remember that he did, no.

Mr. KEITH. Did Mr. Fairchild in those initial interviews indicate that Judge Nixon was at all involved in his son's case?

Mr. WHITE-SPUNNER. I don't believe he did.

Mr. KEITH. Now, Mr. Stewart has also covered with you a tape recording that Mr. Jarvis made of a discussion that he had with Wiley Fairchild?

Mr. WHITE-SPUNNER. Yes, he did.

Mr. KEITH. And that was Respondent's exhibit 25 in the green book?

Mr. WHITE-SPUNNER. Yes, I have it here.

Mr. KEITH. If you could turn to page 31 of that transcript and read for us Mr. Fairchild's remarks, starting "And, uh." Do you see it there, sir?

Mr. WHITE-SPUNNER. "And, uh, and they just [unintelligible] people go in there, and certainly I'd rather do something for a Governor. I'd rather do something for a judge or a prosecuting attor-

ney. No, a judge period. I'd rather do something for them than the average fellow because they're the ones that can help you if you ever need it."

Mr. KEITH. This is Mr. Fairchild speaking?

Mr. WHITE-SPUNNER. Yes.

Mr. KEITH. Finally, Mr. White-Spunner, Mr. Stewart asked you a number of questions suggesting that one of the focuses of your investigation was the passing of the *Drew Fairchild* case from Federal authorities to State authorities; is that correct?

Mr. WHITE-SPUNNER. Yes.

Mr. KEITH. Isn't it also true that one of the focuses of your investigation was the handling of the *Drew Fairchild* case when Bud Holmes had the case; namely, when it was a State case? Isn't that correct?

Mr. WHITE-SPUNNER. Yes.

Mr. KEITH. And that included the fact that more than three years had passed since Drew had been initially indicted but not sentenced?

Mr. STEWART. Objection, Your Honor. We are leading the witness pretty heavily here. This is direct.

The CHAIRMAN. Try not to lead the witness.

Mr. KEITH. Fair enough.

Mr. White-Spunner, if you could turn to page 37 of the first exhibit, which is the transcript of the interview with Judge Nixon.

Mr. WHITE-SPUNNER. Are we in the green book or the—

Mr. KEITH. In the black book.

Mr. WHITE-SPUNNER. In the black book.

Senator DANFORTH. What is this again? Would you identify this again?

Mr. KEITH. This is the first exhibit, exhibit 1, which is the interview of Judge Nixon by the FBI and the Department of Justice.

Senator DANFORTH. The page?

Mr. KEITH. April 1984, and at page 37.

Mr. WHITE-SPUNNER. Page 37. OK.

Mr. KEITH. And if you could start with Judge Nixon's question there toward the bottom of the page, "Well, what's the allegation?"

Mr. WHITE-SPUNNER. "Well, what's the allegation?"

"Weingarten: The allegation is that the Fairchild case was mishandled, number one, and in the course"—

"Nixon: By whom?"

Do you want me to continue?

Mr. KEITH. Yes, sir. Over on to 38, please.

Mr. WHITE-SPUNNER. "Weingarten: Well, that's loose, frankly, and we're obliged by the information to look at it from top to bottom, from the bust in August 1980 until today. And that's, generally speaking, the allegation. And in the course of receiving the information, it was alleged as well that there was a, a, a transfer of property, an imbalanced transfer of property to you from Wiley Fairchild. That's the sum and substance of it."

Mr. KEITH. All right, sir. Now, if you could turn to page 45 of the interview. Read for us beginning there at the top with Judge Nixon's comment, through the end of that page.

Mr. WHITE-SPUNNER. "Nixon: Obviously, you said he was indicted in the State."

"Weingarten: Yes, right. It was never presented federally."

"Nixon: I see."

"Weingarten: And he pled guilty in January 1982."

"Nixon: Uh-huh."

"Weingarten: In December 1982, 11 months later, the case was passed to the files. It's returned to file, from files to the active list, and he's never been sentenced. And, of course, now it's April 1984."

"Nixon: Uh-huh."

"Weingarten: You don't have to be a genius or a, a, particularly sophisticated FBI agent to want to know why a case from August 1980 has never been resolved to this day when the evidence appears to be extremely strong. That's the focus of the allegation. In addition, we received information from the same source that—I don't want to use the word 'sweetheart,' but the word 'imbalanced' financial relationship developed between this Mr. Fairchild, Drew's father, and you, the chief judge of the district."

Mr. KEITH. So, Mr. White-Spunner, isn't it fair to say that one of the focuses—

Mr. STEWART. Objection; leading. It's leading when he starts out "Isn't it fair to say."

Mr. KEITH. That's all I have, Mr. Chairman. Thank you.

The CHAIRMAN. Any recross?

Mr. STEWART. Mr. White-Spunner, just quickly, those passages that Mr. Keith just had you read, they weren't questions whether Wiley Fairchild had complained that Bud Holmes was blackmailing him, were they?

Mr. WHITE-SPUNNER. No. They didn't seem to be, no.

Mr. STEWART. Thank you.

The CHAIRMAN. Any questions of this witness by the committee?

EXAMINATION BY THE COMMITTEE

Senator MACK. Mr. Chairman?

The CHAIRMAN. The Senator from Florida.

Senator MACK. Yes, I just had some.

There's been quite a focus on the question of blackmail and why those issues weren't raised in the discussion with Judge Nixon. Can you give me a further feeling as to why that wasn't? Was it really not in your mind an important issue after the word in your report I think indicated "crucial"?

Mr. WHITE-SPUNNER. My answer to that, sir, is, you know, Mr. Weingarten conducted the entire interview. I was there mainly as a witness. I had no input into necessarily what we would talk about. I was there merely to record the interview. I couldn't really adequately answer that, I don't think.

Senator MACK. Again, I—

Mr. WHITE-SPUNNER. I'm not sure that there was an obligation to—

Senator MACK. I have to say up front this is all fairly new to me in the sense of I'm not an attorney, and I have a feeling that a lot of people in this room are. So I'm going to be asking some questions from that perspective. The word "trapped" was used in the discussion a little earlier by the attorney, and maybe the implication I took from it, maybe this wasn't raised in the sense that the

fellow that was asking these questions maybe was trying to trap the judge. Can you give me some kind of reaction to that?

Mr. WHITE-SPUNNER. I don't think there's any question that Reid Weingarten or any member of the Public Integrity Section was trying to entrap Judge Nixon. I never got that impression at all during the entire course of this investigation.

Senator MACK. Again, I have not seen—read through the entire transcript, nor have I seen, or heard, rather, the tapes. So it's kind of hard for me to tell exactly what role you did play. But I have to tell you that the materials that we've gone over would indicate that you asked a lot of questions. So I'm not sure how comfortable I am with your statement that you really were there just to observe, and that was the reason that you didn't raise the question having to do with blackmail.

Mr. WHITE-SPUNNER. No. In actual fact, I may have asked one or two questions during that entire interview. They would be in the record. The interview was conducted by the departmental attorney. You know, necessarily, because I like you am not an attorney, and this was a departmental attorney asking the chief Federal district judge questions, and I think he was the proper one to conduct the interview.

Senator MACK. Let me just ask again, though, about the blackmail. In observing the interview and the discussions that you had had previous days to the interview about the blackmail situation, did you believe then, and do you believe now, that that's irrelevant?

Mr. WHITE-SPUNNER. I don't think it was irrelevant, no.

Senator MACK. Did you ask—was it Mr. Weingarten?

Mr. WHITE-SPUNNER. Yes, right.

Senator MACK. Did you ask Mr. Weingarten why he didn't raise the issue?

Mr. WHITE-SPUNNER. No. I'm sure he had his own good reasons.

Senator MACK. Did you suggest afterwards that maybe it might be something worth pursuing? You all pursued that as well, didn't you, later?

Mr. WHITE-SPUNNER. I think we pursued everything in the scope of the entire investigation. But whether I—I don't remember, you know, discussing with Weingarten why he asked this or why he did not ask that.

Senator MACK. In your opinion, is it possible when the questions were raised that the judge responded saying, "I don't know anything about that," that he never considered this question of blackmail as being—or he never recalled that issue about blackmail and was, in fact, focusing on just your questions or Mr. Weingarten's questions?

Mr. WHITE-SPUNNER. That's possible. I can't speak for him.

Senator MACK. OK. I don't have any further questions at this time, Mr. Chairman.

The CHAIRMAN. Mr. White-Spunner, do you know of your own knowledge when it was that the blackmail allegation first came to the Government's attention and how that was brought to the Government's attention?

Mr. WHITE-SPUNNER. That would have been when Wiley Fairchild had his employee, John Baltar, contact the U.S. Attorney's

Office in Jackson, Mississippi, and I believe that it was during that conversation. Whatever his complaint was then, I think it included the word "blackmail." Maybe in the files here it shows "extortion," whatever word they used. The U.S. Attorney, when he got this information, he telephoned our special agent in charge and relayed it to him. And that's the first time the word "blackmail" came up in the investigation.

The CHAIRMAN. Any other questions by the committee?

[No response.]

The CHAIRMAN. Thank you very much, Mr. White-Spunner.

Mr. WHITE-SPUNNER. Am I permanently excused?

The CHAIRMAN. Can we excuse this witness?

Mr. STEWART. I'd only question to clarify on the timing if I could, Mr. Chairman, that that call from Mr. Baltar came before you interviewed Judge Nixon; isn't that right?

Mr. WHITE-SPUNNER. Yes, that's correct.

Mr. STEWART. OK.

The CHAIRMAN. I understand.

Mr. STEWART. Then I'm done.

The CHAIRMAN. Can we excuse the witness from the House?

[Pause.]

Mr. BARON. Mr. Chairman, we believe the witness can be excused.

The CHAIRMAN. The witness is excused. Thank you very much, Mr. White-Spunner.

Mr. WHITE-SPUNNER. Thank you very much.

[Witness excused.]

The CHAIRMAN. The House may call its next witness.

Mr. KEITH. Mr. Chairman, Wiley Fairchild will be our next witness, and he will take some time. I'm not sure whether it's the preference of the Chair and the committee to break at this point or to begin the questioning of Mr. Fairchild.

The CHAIRMAN. It's the preference of the committee to go to 12:30. We've got a good half-an-hour to begin.

Are you Mr. Wiley R. Fairchild?

Mr. FAIRCHILD. Yes.

The CHAIRMAN. Mr. Fairchild, will you raise your right hand? Do you, Mr. Wiley R. Fairchild, swear or affirm that the evidence you shall give in the case now pending between the United States and Judge Walter L. Nixon, Jr., shall be the truth, the whole truth, and nothing but the truth so help you God?

Mr. FAIRCHILD. I do. But my name is just Wiley Fairchild.

The CHAIRMAN. Thank you for the correction, Mr. Fairchild.

Mr. Edwards.

TESTIMONY OF WILEY FAIRCHILD

DIRECT EXAMINATION

Mr. EDWARDS. Mr. Fairchild, where do you live?

Mr. FAIRCHILD. Hattiesburg, Mississippi.

Mr. EDWARDS. And how old are you, Mr. Fairchild?

Mr. FAIRCHILD. The 19th of this month I'll be 77.

Mr. EDWARDS. And how far did you go in school?

Mr. FAIRCHILD. I finished the fourth grade.

Mr. EDWARDS. Mr. Fairchild, you have testified before the grand jury concerning Judge Nixon on two occasions; is that correct?

Mr. FAIRCHILD. Yes.

Mr. EDWARDS. And you also testified at Judge Nixon's criminal trial.

Mr. FAIRCHILD. Yes.

Mr. EDWARDS. Did you testify before the impeachment hearings in the House of Representatives?

Mr. FAIRCHILD. Yes.

Mr. EDWARDS. During your appearances before the grand jury, was your testimony truthful to the best of your ability?

Mr. FAIRCHILD. Yes.

Mr. EDWARDS. Was your testimony at Judge Nixon's trial truthful to the best of your ability?

Mr. FAIRCHILD. To the best of my memory, yes.

Mr. EDWARDS. Was your testimony at the House impeachment proceedings truthful to the best of your ability?

Mr. FAIRCHILD. Well, I got confused there real bad, and it didn't come out like I intended it to. My brother Rodney said—

Mr. EDWARDS. Mr. Fairchild, I was asking you about the House impeachment.

Mr. STEWART. I ask that the witness finish his answer.

The CHAIRMAN. The witness can finish his answer.

Mr. FAIRCHILD. Ask the question again.

Mr. EDWARDS. Mr. Fairchild, was your testimony in the House impeachment proceedings last June truthful to the best of your ability?

Mr. FAIRCHILD. As I said, I was awfully confused, and it didn't come out like I intended to because what I said was based on what my brother Rodney had said. He said that the telephone call was after this pass to the files, and that's just not the way it was, the best that I can recollect.

Mr. EDWARDS. Thank you, Mr. Fairchild. Let me ask you about your testimony last August at the post-conviction hearing in Jackson. Now, that's what I believe you were just referring to; is that correct?

Mr. STEWART. Objection to this leading, Mr. Chairman.

Mr. EDWARDS. Was your testimony, Mr. Fairchild, at the post-conviction hearing in Jackson truthful?

Mr. FAIRCHILD. I have always intended to tell the truth just like it was from A to Z. As I say, I got confused there.

Mr. EDWARDS. Mr. Fairchild, when you told the judge in Jackson that you testified falsely at Judge Nixon's trial concerning a couple of dates, is it fair to say—

Mr. STEWART. Objection. That's leading already.

The CHAIRMAN. I'll let him answer the question.

Mr. EDWARDS. Mr. Fairchild, when you told the judge in Jackson that you had testified falsely at Judge Nixon's trial concerning a couple of dates, is it fair to say that you really meant that you had told the truth—

Mr. FAIRCHILD. Yes.

Mr. EDWARDS [continuing]. At Judge Nixon's trial to the best of your ability?

Mr. FAIRCHILD. Yes.

Mr. EDWARDS. But that subsequent to that testimony you had learned from your brother Rodney that a couple of details of your testimony might have been actually incorrect?

Mr. FAIRCHILD. That's—

Mr. STEWART. Mr. Chairman, I don't mean to be impertinent, but—

The CHAIRMAN. This is not a court of law, Mr. Stewart. You're going to have a right to a thorough cross examination. Considering the age of the witness and the questions of what was said at different places, I consider the question proper and am going to let him answer it.

Mr. EDWARDS. So what you're saying is that your memory didn't—

The CHAIRMAN. Now, counsel is not going to characterize what he's saying. Ask him a question, and let him characterize what he's saying.

Mr. EDWARDS. Your memory was different from Rodney's recollection?

Mr. FAIRCHILD. Yes.

Mr. EDWARDS. Is it fair to say that, like most of us, you occasionally get confused sometimes and that your memory isn't quite what it used to be?

Mr. FAIRCHILD. That's correct.

Mr. EDWARDS. Mr. Fairchild, I'll be asking you questions today concerning events that took place several years ago. Would your recollection of what happened back in the early 1980's have been clearer at the time you testified at Judge Nixon's trial than it is today?

Mr. FAIRCHILD. Yes.

Mr. EDWARDS. Mr. Fairchild, the Senate has admitted into evidence your prior testimony before the House of Representatives and at Judge Nixon's trial. It's my hope to try to limit my questions to the more important testimony, recognizing that your appearances before the House and at Judge Nixon's trial each lasted for several hours. In the event that I do not cover a point that was the subject of your prior testimony, may the Senate rely on that prior testimony; namely, your trial and the House impeachment testimony?

Mr. FAIRCHILD. Yes.

Mr. EDWARDS. What do you do for a living, Mr. Fairchild?

Mr. FAIRCHILD. My father was a contractor, and I followed that for years, and now I'm in the oil exploration.

Mr. EDWARDS. And have you been pretty successful in that business?

Mr. FAIRCHILD. Real successful.

Mr. EDWARDS. And would you say that your reputation in the community is of a shrewd investor who knows how to find that oil?

Mr. FAIRCHILD. Yes.

Mr. EDWARDS. And your talents in the oil business have made you rather wealthy; is that correct?

Mr. FAIRCHILD. Yes.

Mr. EDWARDS. Do you actually sell oil and gas interests to the general public?

Mr. FAIRCHILD. No.

Mr. EDWARDS. Did you sell interests in three oil wells to Judge Nixon?

Mr. FAIRCHILD. Yes.

Mr. EDWARDS. Was Judge Nixon a close friend or a relative of yours?

Mr. FAIRCHILD. Not then. Carroll Ingram approached me about putting the judge in—he just said a good deal.

Mr. EDWARDS. Thank you.

How did it come about, your transaction with Judge Nixon?

Mr. FAIRCHILD. Well, I just picked up three wells that I thought would—at least one or two of them would be good, and put him in them wells.

Mr. EDWARDS. Who is Carroll Ingram?

Mr. FAIRCHILD. He's my first cousin, an attorney in Hattiesburg—second cousin, rather.

Mr. EDWARDS. And why did you agree to sell interests to Judge Nixon?

Mr. FAIRCHILD. Why did I agree to sell it to him?

Mr. EDWARDS. Yes.

Mr. FAIRCHILD. Well, Carroll asked me to, and I knew him and the judge was good friends, and it wasn't that I wanted—exactly wanted to sell it to him. I didn't want to not sell it to him.

Mr. EDWARDS. Well, did your knowledge that he was a Federal judge, an influential judge, play a role in your decision to sell these interests to Judge Nixon to put him in a deal?

Mr. FAIRCHILD. Well, I would say it had some influence on it, yeah.

Mr. EDWARDS. Well, were you concerned with what would happen if you might turn him down?

Mr. STEWART. Mr. Chairman, which case are we trying?

The CHAIRMAN. Counsel can ask the question.

Mr. STEWART. He can ask it, but it's opening it up for a lot of cross-examination. I just hope I'm going to be given the scope.

The CHAIRMAN. Proceed, Mr. Edwards.

Mr. EDWARDS. I'll rephrase the question, Mr. Chairman.

Were you concerned about what might happen if you refused to put Judge Nixon in a deal?

Mr. FAIRCHILD. Well, it just wasn't no big deal. The way I deal, it just wasn't no big deal. I didn't put no significance in it. I just simply—it wasn't going to matter what he's going to get out of it, you know. It wouldn't affect me enough to matter, so I just wasn't concerned about it.

Mr. EDWARDS. Thank you.

How many wells were you involved in at the time when you were asked to put Judge Nixon into a deal?

The CHAIRMAN. Now, Mr. Edwards, to the best of your ability—we know they are business partners, and I don't think we need to explore all of his other business arrangements. They're not relevant to the charges.

Mr. EDWARDS. Mr. Chairman, thank you.

Mr. Fairchild, had these three wells that you're referring to been tested by the end of July 1980 just before the documents were executed? Had they been tested?

Mr. FAIRCHILD. I'm sorry. I just can't remember them dates.

Mr. EDWARDS. Did you haggle or discuss which wells were to be selected? Did you discuss or haggle over the cost with Judge Nixon?

Mr. FAIRCHILD. No.

Mr. EDWARDS. You testified both at Judge Nixon's trial and in the House of Representatives proceedings last summer that you could have gotten between \$26,000 and \$28,000 for the three wells in February 1981; is that correct?

Mr. FAIRCHILD. If I went out and pushed them, yes.

Mr. STEWART. Mr. Chairman, why can't he ask the question?

The CHAIRMAN. I sustain the objection, and I don't think that the question, these questions of cost are relevant.

Mr. EDWARDS. I believe the next question is relevant, Mr. Chairman.

Mr. Fairchild, in your testimony at Judge Nixon's trial, you stated that you wanted to get paid for any wells you sold "something where it won't look like a hundred percent gift." Do you recall that testimony?

Mr. FAIRCHILD. I don't recall it, but if it's in the record, I'm sure it's so.

Mr. EDWARDS. Now, you loaned Judge Nixon the entire \$9,500 purchase price; is that correct?

Mr. FAIRCHILD. Yes.

Mr. EDWARDS. Do you know how much Judge Nixon has received in royalties up to date, approximately?

Mr. FAIRCHILD. No. We furnished it to somebody. It was an extremely good investment. Probably sixty or seventy thousand.

Mr. EDWARDS. Now, were you indicted by the Department of Justice as a result of your oil investment with Judge Nixon?

Mr. FAIRCHILD. Yes.

Mr. EDWARDS. And did you ultimately plead guilty to giving Judge Nixon an illegal gratuity?

Mr. FAIRCHILD. Yes.

Mr. EDWARDS. Part of your agreement was that you would cooperate with the Government and testify truthfully?

Mr. FAIRCHILD. Yes.

Mr. EDWARDS. What sentence did you receive as a result of your guilty plea?

Mr. FAIRCHILD. Sixty days in a halfway house.

Mr. EDWARDS. And you served that sentence?

Mr. FAIRCHILD. Yes.

Mr. EDWARDS. Now, how did there come a time when Judge Nixon thanked you? Was there a time when Judge Nixon thanked you for putting him into this deal?

Mr. FAIRCHILD. Yes. He come by the office and thanked me for it, and he says, "If I can ever help you, I will, and if I can't, I'll just tell you I can't."

Mr. EDWARDS. And that took place where, that conversation?

Mr. FAIRCHILD. In my office in Hattiesburg.

Mr. EDWARDS. In your office. Did he tell you at that meeting that he was grateful?

Mr. FAIRCHILD. Well, I don't remember the words. I think he—well, he come by there to thank me for it, yes.

The CHAIRMAN. For the record, when was this conversation in your office, Mr. Fairchild?

Mr. FAIRCHILD. I'm sorry. I just cannot remember them dates any more.

Mr. EDWARDS. Mr. Fairchild, in this conversation that you refer to, when Judge Nixon dropped by your office, I believe you said, what did he say specifically about helping you?

Mr. FAIRCHILD. Well, that's all I can recall that he said. He just says, "I come by here, I want to thank you for putting me in that deal. If I can ever help you, I will, and if I can't, I'll just tell you I can't."

Mr. EDWARDS. After you put Judge Nixon into this deal, did he stop by your office to see you later?

Mr. FAIRCHILD. The best of my memory, yeah, a time or two.

Mr. EDWARDS. He would drop by; is that correct?

Mr. FAIRCHILD. Yeah.

Mr. EDWARDS. Did you also talk on the telephone with the judge after you put him in the deal?

Mr. FAIRCHILD. Yes.

Mr. EDWARDS. How often?

Mr. FAIRCHILD. Oh, maybe two or three times. I just don't remember.

Mr. EDWARDS. On these occasions of these phone calls, did Judge Nixon call you or did you call him?

Mr. FAIRCHILD. Well, on one occasion I remember, he called me.

Mr. EDWARDS. At the time you signed the documents, which was in early 1981, putting Judge Nixon into the oil deal, was your son, *Drew Fairchild*, involved in a drug-smuggling case?

Mr. FAIRCHILD. Yes.

Mr. EDWARDS. How old is Drew?

Mr. FAIRCHILD. He's 50.

Mr. EDWARDS. Fifty.

Mr. FAIRCHILD. No, about 53 or 54.

Mr. EDWARDS. And what kind of a relationship have you had with Drew?

Mr. FAIRCHILD. Well, at that time, it was—we wasn't even speaking.

Mr. EDWARDS. At this time in 1980, where was he working?

Mr. FAIRCHILD. I don't recall.

Mr. EDWARDS. Do you know what his job was at this time in 1980, Mr. Fairchild?

Mr. FAIRCHILD. Oh, running the airport. I believe that's what he was doing.

Mr. EDWARDS. And at the airport, did he have a partner?

Mr. FAIRCHILD. Yeah.

Mr. EDWARDS. And what was his name?

Mr. FAIRCHILD. Bob Royals.

Mr. EDWARDS. And then in August 1980, the Federal authorities seized a planeload of marijuana at the Hattiesburg airport. How did you learn about that? How did you learn about the drug bust?

Mr. FAIRCHILD. I just can't remember now.

Mr. EDWARDS. Did you later learn that your son, Drew, was involved in the planeload of marijuana?

Mr. FAIRCHILD. Yes.

Mr. EDWARDS. Do you remember how you learned about Drew's involvement?

Mr. FAIRCHILD. I can't recall now.

Mr. EDWARDS. Well, do you know whether or not Drew worked out an agreement with the district attorney's office in Jackson—the U.S. Attorney's Office in Jackson, a plea?

Mr. FAIRCHILD. Yes.

Mr. EDWARDS. And then in January 1982, was Drew indicted by the Forrest County grand jury; is that correct?

Mr. FAIRCHILD. Yes.

Mr. EDWARDS. Who was the district attorney in Forrest County at that time?

Mr. FAIRCHILD. Bud Holmes.

Mr. EDWARDS. How did you find out that Drew had been indicted in State court where the district attorney was Bud Holmes?

Mr. FAIRCHILD. Bud called me and told me he had just been indicted, and he says, "If you'll get Carroll or Bill Porter or who to come down, I'll let him out on his own recognizance."

Mr. EDWARDS. Thank you.

Did there come a time when you felt you were being blackmailed by Bud Holmes?

Mr. FAIRCHILD. Yes.

Mr. EDWARDS. Will you tell us what occurred when Robert Royals visited you? And who was Robert Royals?

Mr. FAIRCHILD. He was Drew's partner, my son's partner at the airport.

Mr. EDWARDS. And did he visit your office?

Mr. FAIRCHILD. Yeah. He come in one Monday morning, and he said, "I was talking to Bill Porter, and Bill Porter said if the old man would get up off his money, his son won't get in no trouble." And Bob Royals told me—told Bill Porter, he said, "Well"—no, first he told him, "If Drew would come up with some money," and Bob Royals told Bill Porter he didn't have no money. And he said, "Well, his old man has." And he said, "Well, that's not his, though." He said, "Well, if his old man knew he was going to get his tail in a crack, he'd get up off his money." And I said, "Bob, I got the message loud and clear. The answer is not 'No.' It's 'Hell, no.'" That ended that conversation.

Mr. EDWARDS. Did that make you angry?

Mr. FAIRCHILD. Yes, it did.

Mr. EDWARDS. Why did you think that Bud Holmes was behind this blackmail attempt, as you described it?

Mr. FAIRCHILD. Well, it's been in three or four years, in and out, and I just thought it was.

Mr. EDWARDS. What did you do following this meeting with Robert Royals in your office? What did you do then?

Mr. FAIRCHILD. Well, I called Carroll Ingram and told him I wanted to talk to Judge Nixon. A little while passed, and then I called him myself, and he come up to see me.

Mr. EDWARDS. Why did you want to talk to Judge Nixon about this?

Mr. FAIRCHILD. Well, I knew him and Bud and Carroll was good friends. I felt like I'd been done wrong.

Mr. EDWARDS. Well, did you call Judge Nixon because he had previously offered his help? Is that one of the reasons?

Mr. STEWART. Could we get the witness's testimony rather than Mr. Edwards' suggestions?

The CHAIRMAN. I agree with counsel. Mr. Edwards, try not to lead the witness.

Mr. EDWARDS. Why did you want to talk to Judge Nixon about this? Have you answered that completely?

Mr. FAIRCHILD. Well, I wanted to——

The CHAIRMAN. Why did you call? Why did you call Judge Nixon, Mr. Fairchild?

Mr. FAIRCHILD. I wanted to talk to him about my son's case.

Mr. EDWARDS. Why did you think it would do any good?

Mr. FAIRCHILD. Well, that's just the way of life. Friends help friends. I didn't think it was because I had given him the oil and gas deal. That wasn't—because he had said, "If I can ever help you, I will. If I can't, I just won't."

Mr. EDWARDS. Did you think he owed you a favor after the oil deal?

Mr. FAIRCHILD. Yeah. I figured he'd help me if he could.

Mr. EDWARDS. Mr. Fairchild, we want you to please turn to House exhibit 40, if the clerk could help us there, the last exhibit a long-distance telephone record for your company, Fairchild Construction Company.

Do you have that, Mr. Stewart?

Mr. STEWART. Yes, somewhere.

Mr. EDWARDS. Do you see there, Mr. Fairchild, the telephone call on December 1, 1982, at 2:02 p.m.?

Mr. FAIRCHILD. Yes.

Mr. EDWARDS. If I represent to you that 436-4317 was the number for Judge Nixon's chambers, could that be the call that you referred to that you made to Judge Nixon?

Mr. FAIRCHILD. I think it was, yes.

Mr. EDWARDS. Could there have been any other reason why you would have called Judge Nixon at that particular time?

Mr. FAIRCHILD. I can't think of any other reason.

Mr. EDWARDS. Were there any other occasions when you called Judge Nixon?

Mr. FAIRCHILD. I don't recall calling.

Mr. EDWARDS. Mr. Chairman, I would like to offer exhibit 40 into the record. It has not been introduced before during any of the prior proceedings.

The CHAIRMAN. Any objection, Mr. Stewart? The witness has already testified that he made the call.

Mr. STEWART. He has testified he made a call. Whether the business record of Fairchild Construction reflects a call by him on this date rather than any of the other 80 employees and all the other issues, I'll bring out on cross-examination. This is just a record.

The CHAIRMAN. Do you object to this being entered?

Mr. STEWART. I don't object.

The CHAIRMAN. It is entered in the record.

[The document referred to was marked House Exhibit No. 40 and was received in evidence.]

Mr. EDWARDS. When did you ultimately meet with Judge Nixon after the phone call?

Mr. FAIRCHILD. I don't remember exactly, but it was shortly after. A day or two or something like that.

Mr. EDWARDS. And what did Judge Nixon say at this particular meeting you referred to?

Mr. FAIRCHILD. Well, I was upset, and I don't remember. I just don't remember what he said, if he said anything.

Mr. EDWARDS. What did you ask him about or what did you tell him at this meeting that was in your office?

Mr. FAIRCHILD. I told him that I thought Bud Holmes was trying to blackmail me and I thought Carroll Ingram could be in there with him on it.

Mr. EDWARDS. Did Judge Nixon say he couldn't help you?

Mr. FAIRCHILD. I don't remember what. I'm sure he said something, but I just don't remember him saying he would help me or what. I'm just sorry, I just can't remember.

Mr. EDWARDS. Did you get the impression that Judge Nixon was going to talk to Bud Holmes about Drew's case?

Mr. FAIRCHILD. Yeah, yeah.

The CHAIRMAN. What gave you that impression, Mr. Fairchild?

Mr. FAIRCHILD. Well, just the nature of the way—just the nature that I had helped him, and I didn't see no reason why he wouldn't help me if he—at least go talk to him.

Mr. EDWARDS. Now, on that same evening, did you get a call from Judge Nixon late in that evening, the same evening?

Mr. FAIRCHILD. Yes.

Mr. EDWARDS. Tell us about that phone call.

Mr. FAIRCHILD. He said, "Wiley, you know that man you was talking about seeing?" And I said, "Yeah?" He says, "Well, I'm at his house, and everything's going to be taken care of to your satisfaction." And I says, "Thank you, Judge. I appreciate that."

And then Bud Holmes got on the phone, and he said, "Wiley, when this man asks me to do something, I don't ask no questions. I just go ahead and do it."

Mr. EDWARDS. Now, how did you know who was talking, Holmes and Judge Nixon?

Mr. FAIRCHILD. I recognized their voices.

Mr. EDWARDS. When you picked up the phone when it rang, who was on the line? Who spoke to you first?

Mr. FAIRCHILD. Judge Nixon.

Mr. EDWARDS. Now, you've previously testified that this phone call took place in the evening. About what time?

Mr. FAIRCHILD. Well, I had ate supper, so it was probably around—around seven o'clock.

Mr. EDWARDS. Had you been drinking that evening?

Mr. FAIRCHILD. Yes.

Mr. EDWARDS. How much, Mr. Fairchild?

Mr. FAIRCHILD. Six drinks. That's what I drink every night.

Mr. EDWARDS. Is your recollection of that conversation clear in your mind?

Mr. FAIRCHILD. Yes, because I was glad to get the call. I figured that things would be all right.

Mr. EDWARDS. Well, after you received the phone call where you talked both to Holmes and Judge Nixon, what did you think was going to happen in Drew's case?

Mr. FAIRCHILD. Well, I thought it would be passed to the files.

Mr. EDWARDS. So you thought it would be all over?

Mr. FAIRCHILD. Yeah.

Mr. EDWARDS. Now, to the best of your recollection, did this meeting and the phone call that night with Judge Nixon and Mr. Holmes take place before or after Drew's case was passed to the file?

Mr. FAIRCHILD. It had taken place before his case was passed. That's to the best of my—I'm just almost a hundred percent positive on that.

Mr. EDWARDS. Mr. Fairchild, do you think that Judge Nixon helped to get the case passed to the files?

Mr. STEWART. Objection.

The CHAIRMAN. Sustained.

Mr. EDWARDS. How did you find out that the case had been passed to the files?

Mr. FAIRCHILD. Not too long after that, Carroll Ingram come out there to the office. He says, "Here's your Christmas present," and he handed me the paper where it had been passed to the file. It was just before Christmas.

Mr. EDWARDS. Mr. Chairman, I have just a couple of more questions.

Mr. Fairchild, during the Federal investigation, in your meetings with the Government, did anyone from the Department of Justice, the FBI, or anyone else ever suggest that you should lie or testify differently from your own recollection?

Mr. FAIRCHILD. No.

Mr. EDWARDS. Did anyone from the Government ever try to influence you to testify to something you thought was not true?

Mr. FAIRCHILD. Well, they could have. I mean, they could have, but I just—there's so much negotiation and going on, but just intentionally try to get me to lie, no, I don't think they did.

Mr. EDWARDS. Now, your plea agreement with the Government required you to testify faithfully and truthfully to the best of your ability; is that correct?

Mr. FAIRCHILD. Yes.

Mr. EDWARDS. And did you do your best to testify truthfully at Judge Nixon's trial?

Mr. FAIRCHILD. Yes.

Mr. EDWARDS. And have you testified truthfully today, Mr. Fairchild, to the best of your ability?

Mr. FAIRCHILD. Yes.

Mr. EDWARDS. I have a couple more, Mr. Fairchild. Is it fair to say that in your meeting with Judge Nixon you brought up the subject of your son's case?

Mr. FAIRCHILD. Repeat the question?

Mr. EDWARDS. When you met with Judge Nixon at your office, you brought up the subject of Drew's case; is that correct?

Mr. STEWART. Objection.

The CHAIRMAN. Sustained.

Mr. Fairchild, when you had the meeting with Judge Nixon, did you discuss your son's case with Judge Nixon?

Mr. FAIRCHILD. Yeah. I thought that Bud Holmes was trying to blackmail me.

Mr. EDWARDS. I believe that's all, Mr. Chairman. Thank you.

The CHAIRMAN. Thank you, Mr. Edwards, very much.

The committee will recess until 2 o'clock sharp, and we will resume the cross examination of Mr. Fairchild.

[Whereupon, at 12:37 p.m., the committee recessed, to reconvene at 2 p.m., this same day.]

AFTERNOON SESSION

The CHAIRMAN. A quorum is present. We'll resume the hearing with cross examination of Mr. Fairchild by Mr. Stewart.

CROSS EXAMINATION

Mr. STEWART. Good afternoon, Mr. Fairchild.

Mr. FAIRCHILD. Good afternoon.

Mr. STEWART. I want to ask you some questions right at the beginning here about this blackmail suspicion that you had. Would it be fair to say that early on, in Drew's case, you started suspecting he was getting prosecuted because his father was rich?

Mr. FAIRCHILD. Well, yes, I suspected that, but I more or less thought it was blackmail.

Mr. STEWART. And that bothered you the whole time of Drew's case, didn't it?

Mr. FAIRCHILD. What?

Mr. STEWART. That bothered you the whole time of Drew's case, didn't it?

Mr. FAIRCHILD. Well, it was in the paper all the time, sure, it bothered me.

Mr. STEWART. OK. And it go so every time you talked to someone about the case, that's what you talked about, was the blackmail, wasn't it?

Mr. FAIRCHILD. No, I didn't go around talking to everybody about the blackmail.

Mr. STEWART. Well, the people you trusted?

Mr. FAIRCHILD. Well, I talked to some of them, yes.

Mr. STEWART. OK. And you told the FBI about it when they first came to see you, didn't you?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK.

Mr. FAIRCHILD. I was the one who sent for the FBI.

Mr. STEWART. And you sent for them because you were concerned about blackmail from Bud Holmes and maybe Carroll Ingram, isn't that right?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK. I'd like to take a minute—and I'm going to use this board to kind of write them down—to run through some of the events that you thought that bothered you, that made you feel like there was blackmail.

Now, I take it from your testimony earlier that one of the reasons that Bob Royals, who was Drew's partner, was not prosecuted, is that right?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK.

Mr. Chairman, with your permission—okay, so the first reason is that Royals isn't charged. Now, there came a time in the case, though, when Bill Porter—now, Bill Porter was Drew's lawyer, isn't that right?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK. Now, he sued Drew for the legal fee in connection with representing Drew, didn't he?

Mr. FAIRCHILD. Yes.

Mr. STEWART. He sued him for ten thousand bucks, right?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK. And he had done about two days of work in negotiating that Federal plea, hadn't he?

Mr. FAIRCHILD. Yes.

Mr. STEWART. That's five thousand bucks a day, isn't it?

Mr. FAIRCHILD. Yes.

Mr. STEWART. That's good wages.

Mr. FAIRCHILD. Yes.

Mr. STEWART. You thought that was an outrageous bill, didn't you?

Mr. FAIRCHILD. Well, my son thought it was, yes.

Mr. STEWART. OK. But to hush Mr. Porter up, to get him out of the courts against your son, you paid him two thousand six hundred bucks, didn't you?

Mr. FAIRCHILD. Yes.

Mr. STEWART. All right. Now, that's exhibit 5, Respondent's exhibit 5. I understand—you can look at that in the green book—that you wrote him a check.

OK. So when you paid him—that is your check there, isn't it, exhibit 5?

Mr. FAIRCHILD. Yes.

Mr. STEWART. And that felt like you were paying blackmail, didn't it?

Mr. FAIRCHILD. Huh?

Mr. STEWART. Didn't that feel like you were paying blackmail?

Mr. FAIRCHILD. No, at that time the going fee for getting somebody out of a marijuana deal was \$10,000, and that's what I understand Bob Porter told my son, but Drew said it just wasn't worth that.

Mr. STEWART. OK. Mr. Porter claimed it was a correct fee and Drew didn't think so, is that right?

Mr. FAIRCHILD. That's right.

Mr. STEWART. OK. You didn't appreciate having to pay your son's fee, did you?

Mr. FAIRCHILD. No. No, I didn't appreciate it.

Mr. STEWART. OK. Now, what's the date on that check, can you see that there, July 3, 1981?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK. Now, after that payment was made, then Drew got indicted in State court, didn't he, by Bud Holmes?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK. So, you paid the fee but he still gets indicted, doesn't he?

Mr. FAIRCHILD. Yes.

Mr. STEWART. Now, did that feel like you were getting pressured again?

Mr. FAIRCHILD. Well, yes.

Mr. STEWART. OK. Let's put that one up there. OK. And you testified earlier that you learned about that lawsuit, about that indictment, because Bud Holmes called you, right?

Mr. FAIRCHILD. Yes.

Mr. STEWART. Did you ever understand why Bud Holmes called you and he didn't call your son?

Mr. FAIRCHILD. Well, I think the reason he called me, he says get Carroll Ingram or Bill Porter or who, I had just taken it that he wanted to steer me to Bill Porter.

Mr. STEWART. You thought he was trying to get you to hire Bill Porter?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK. But you hadn't been indicted, had you, Mr. Fairchild?

Mr. FAIRCHILD. Huh?

Mr. STEWART. You hadn't been indicted?

Mr. FAIRCHILD. No.

Mr. STEWART. So, why didn't he call Drew and tell Drew that he had been indicted?

Mr. FAIRCHILD. I don't know.

Mr. STEWART. Didn't you think he was pressuring you a little?

Mr. FAIRCHILD. Well, there was so much going on over that time, I don't remember what I was thinking. Me and Drew wasn't on speaking terms and I just was upset about it, of course.

Mr. STEWART. And it struck you funny that Bud Holmes would call you, rather than Drew, didn't it?

Mr. FAIRCHILD. No, not really, because me and Bud Holmes was, you know, we was I thought on good terms.

Mr. STEWART. OK. Now, did you understand why Bud Holmes had the case, if there was a deal in the Federal court?

Mr. FAIRCHILD. No, I don't.

Mr. STEWART. But after Drew was indicted, you paid Bill Porter the rest of his fee, didn't you?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK. If you'd look at the next exhibit in that book in front of you, exhibit 6, that's your check to Mr. Porter?

Mr. FAIRCHILD. OK.

Mr. STEWART. So, that's another way that the message has gotten through to you that you've got to pay Bill Porter, isn't that right?

Mr. FAIRCHILD. Well, I knew that if he got indicted, I wish I had went ahead and paid the \$10,000 to start with, but me and Drew wasn't on speaking terms at that time.

Mr. STEWART. You're getting squeezed, aren't you, Mr. Fairchild?

Mr. FAIRCHILD. Well, Drew thought so.

Mr. STEWART. OK. And that indictment felt like blackmail again, didn't it?

Mr. FAIRCHILD. Well, yes. Yes.

Mr. STEWART. Let's put up the \$7,500. OK. Then there comes a time when Bob Royals came to see you and he said that Bill Porter and he had been over at Maxwell Air Force Base, at the prison there. Do you recall that?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK. And they had been visiting a friend of theirs named Joe Krohn. Do you remember that?

Mr. FAIRCHILD. Yes.

Mr. STEWART. You've testified about this several times before?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK. And Mr. Royals comes to you and I think you said it was a Monday morning, and he says Porter has told him that you've got to get up off your money or Drew's going to have his tail in a crack?

Mr. FAIRCHILD. Yes.

Mr. STEWART. And you knew that was blackmail?

Mr. FAIRCHILD. Yes, but I didn't know—I thought it had come from Bud Holmes, but I just don't know.

Mr. STEWART. And you showed him the door, you weren't going to deal with him on that grounds, were you?

Mr. FAIRCHILD. No.

Mr. STEWART. You told him no, and I think you said you told him, "Hell, no," right?

Mr. FAIRCHILD. That's right.

Mr. STEWART. OK. So, that's another one. Then, in December 1982, when Drew's case is passed to the files, I believe you've testified before that that came as a complete surprise to you. Do you remember that?

Mr. FAIRCHILD. It being passed to the files?

Mr. STEWART. Yes, sir.

Mr. FAIRCHILD. Well, it wasn't something that I was shocked about, it was something I was proud of, though.

Mr. STEWART. You were proud of, did you say?

Mr. FAIRCHILD. It had been passed to the files.

Mr. STEWART. I didn't hear you, I'm sorry.

Mr. FAIRCHILD. I was proud that they had passed it to the files.

Mr. STEWART. You were pleased?

Mr. FAIRCHILD. Yes, sure.

Mr. STEWART. But it wasn't something you were expecting at the time, was it?

Mr. FAIRCHILD. Well, I'll say I was surprised.

Mr. STEWART. Well, do you recall testifying in the House that, at the time it was passed to the files, you didn't even know that there was such a thing as passing a case to the files?

Mr. FAIRCHILD. Would you repeat the question?

Mr. STEWART. Well, maybe you'd like to hear your testimony. It is at page 195 of the volume. The question is, isn't it true that you didn't even know that there was such a legal procedure as passing a case to the files until it happened in Drew's case. Answer: That's correct.

Mr. FAIRCHILD. Yes, that's correct.

Mr. STEWART. OK. So, you didn't even know there was such a thing as passing the case to the files?

Mr. FAIRCHILD. No.

Mr. STEWART. OK. So, it was a surprise to you when it happened?

Mr. FAIRCHILD. Well, yes. Yes.

Mr. STEWART. Now, when it was passed to the files, you testified that Carroll Ingram brought you the order passing the case to the files, correct?

Mr. FAIRCHILD. Yes.

Mr. STEWART. All right. Now, Carroll wasn't Drew's lawyer, was he?

Mr. FAIRCHILD. No.

Mr. STEWART. Bill Porter was Drew's lawyer?

Mr. FAIRCHILD. Yes.

Mr. STEWART. So, Mr. Ingram didn't have any obvious connection to this case, to Drew's case, did he?

Mr. FAIRCHILD. No.

Mr. STEWART. Didn't that make you a little suspicious when Mr. Ingram showed up with that order?

Mr. FAIRCHILD. Well, he had got—I think Mr. Ingram had got the word that, I figured that him and Bud Holmes was together.

Mr. STEWART. Do you recall testifying at the trial of Judge Nixon that you thought that made you suspicious about Carroll when he showed up with that order passing the case to the files?

Mr. FAIRCHILD. Yeah.

Mr. STEWART. Let's put that on the board.

Now, when the case is passed to the files, that's when the publicity heats up real bad, isn't it?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK. It's on the TV about the case being passed to the files, isn't it?

Mr. FAIRCHILD. Yes.

Mr. STEWART. It's on the front page of the newspaper, isn't it?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK. Now, before this event happens, where it's passed to the files, you're embarrassed and you've got a situation where your son's being prosecuted for drug smuggling and you don't like that at all, do you?

Mr. FAIRCHILD. No.

Mr. STEWART. OK. But now, isn't the story, aren't the editorials in the paper all about how not only do you have a son who's smuggling drugs, but they're saying that Wiley Fairchild is using his influence to help his son? Isn't that what the publicity and the rumors around town start to be?

Mr. FAIRCHILD. Yes, there's rumors to that effect.

Mr. STEWART. OK. And you don't like that at all, do you?

Mr. FAIRCHILD. No.

Mr. STEWART. Because it's not true, is it?

Mr. FAIRCHILD. Well, no, I wasn't—what I told Judge Nixon, if he would go ahead and prosecute Bob Royals, they wouldn't hear a damn word from me, is treat him just like they did my son.

Mr. STEWART. You weren't trying to get any special treatment or favored treatment for Drew, were you?

Mr. FAIRCHILD. No.

Mr. STEWART. You didn't ask him to do anything or get a lighter sentence or no prosecution of Drew, did you?

Mr. FAIRCHILD. No.

Mr. STEWART. In fact, you weren't on very good terms with Drew, were you?

Mr. FAIRCHILD. No.

Mr. STEWART. You figured a man that old, if he got in that kind of trouble, he could take care of himself, didn't you?

Mr. FAIRCHILD. Yes.

Mr. STEWART. But now, after you got all this publicity about the case being passed to the files and how he's getting cut breaks, now isn't the publicity that you've done something wrong, isn't that the implication that's coming through now?

Mr. FAIRCHILD. Yeah.

Mr. STEWART. And you didn't like that at all, did you?

Mr. FAIRCHILD. No.

Mr. STEWART. And then 33 days later, the case is passed out of the files, it goes back under the active files, doesn't it, it goes on the active docket, Drew's case?

Mr. FAIRCHILD. Judge McKenzie, when he went in office, he put it back.

Mr. STEWART. It came right back on the active docket?

Mr. FAIRCHILD. Yes.

Mr. STEWART. So, you've had that whole dance and you're right back where you started from, isn't that right?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK. Did you figure right then that maybe Bud Holmes was playing games with you?

Mr. FAIRCHILD. Well, there was a lot going on then and I don't remember exactly what I figured at that time.

Mr. STEWART. Well, let's put it a different way: You were completely confused and upset about these events, I assume?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK. And you thought the case coming back out of the files, maybe someone was trying to blackmail you still, didn't you?

Mr. FAIRCHILD. I think that was my thinking at that time.

Mr. STEWART. Now, in August 1983—and the date you may not remember that closely, but around that time—you recall there was an election for district attorney in your area, in Forrest County, and Bud Holmes didn't stand for reelection. Do you remember that?

Mr. FAIRCHILD. That's right.

Mr. STEWART. OK. But his first assistant did stand for election, Glenn White's his name, right?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK. And Drew's case is still in that office, it's still in the District Attorney's office, isn't it?

Mr. FAIRCHILD. Yes.

Mr. STEWART. And someone comes to you and says, "Wouldn't you like to give some money to Glenn White's campaign," isn't that right?

Mr. FAIRCHILD. I don't remember just the words that were said, just how it come about, but Buzz Cook, he said I want to borrow \$2,500 or something, and he didn't tell me that is what it was for but I figured that is what it was for.

Mr. STEWART. You figured it was for Glenn White's campaign?

Mr. FAIRCHILD. Yes.

Mr. STEWART. And you couldn't say no to him, could you, with Drew's case in his office?

Mr. Fairchild. But that didn't have no influence on it, that didn't cross my mind.

Mr. STEWART. It didn't cross your mind. All right.

Let's talk about the end of 1983, this is when Bud Holmes is leaving office. Do you recall an occasion when he and Judge McKenzie came out to your office?

Mr. FAIRCHILD. Yeah.

Mr. STEWART. Can you describe what happened then? Now, Judge McKenzie is a Circuit Judge in your county, correct?

Mr. FAIRCHILD. Yes.

Mr. STEWART. And he had Drew Fairchild's case in front of him, didn't he?

Mr. FAIRCHILD. Yes.

Mr. STEWART. All right. Now, what time of day did Bud Holmes and Judge McKenzie arrive at your office?

Mr. FAIRCHILD. It was early in the morning.

Mr. STEWART. About 7?

Mr. FAIRCHILD. Well, between 7 and 8, that's the best of my memory.

Mr. STEWART. What was their conversation?

Mr. FAIRCHILD. Well, McKenzie, he didn't say anything, and I don't even remember now what Bud Holmes said, but he said words to the effect, he said the judge could give him 5 years—no, he said Judge McKenzie could give him 20 years and there ain't nothing nobody can do about it. Of course, I knew the maximum was 5 years, and so McKenzie didn't say anything. I don't remember him speaking.

Mr. STEWART. Did you really understand what they were doing there that day?

Mr. FAIRCHILD. No, I sure didn't.

Mr. STEWART. Did it make you suspicious?

Mr. FAIRCHILD. Well, it was abnormal.

Mr. STEWART. You had never had a judge and a prosecutor in a pending case show up on your doorstep before?

Mr. FAIRCHILD. No.

Mr. STEWART. Did that reinforce your concerns about being blackmailed?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK. So, then, something happens in the spring of 1984 involving Drew's case and you decide you're not going to take it any more and you call the FBI, right?

Mr. FAIRCHILD. Yes.

Mr. STEWART. And you tell them you're being blackmailed, isn't that right?

Mr. FAIRCHILD. I told them I thought I was——

Mr. STEWART. I understand.

Mr. FAIRCHILD [continuing]. That I was almost positive, yes.

Mr. STEWART. OK. All right, Mr. Fairchild, now I want to ask you some questions, I'm changing the subject just a little bit, about the events of that day when Judge Nixon came by your office. You got a phone call that evening from Bud Holmes' farm.

Now, when you saw Judge Nixon, you explained to him your concern about being blackmailed, correct?

Mr. FAIRCHILD. Yes.

Mr. STEWART. You told him you thought Bud Holmes was black-mailing you, right?

Mr. FAIRCHILD. Yes.

Mr. STEWART. And you told him you thought maybe Carroll Ingram was in on it somehow?

Mr. FAIRCHILD. yes.

Mr. STEWART. OK. And we covered this, but I want to make sure, you didn't tell him you wanted any breaks for Drew, did you?

Mr. FAIRCHILD. No, no, I didn't tell him—in fact, what I told him if he'd go ahead and prosecute Bob Royals, just like they did with my son, they wouldn't hear a damn word out of me.

Mr. STEWART. OK. And you didn't ask Judge Nixon to do anything about Drew's case?

Mr. FAIRCHILD. No.

Mr. STEWART. OK. You didn't ask him to put in a good word for Drew, did you?

Mr. FAIRCHILD. No.

Mr. STEWART. OK. Now, you were hoping that if the blackmail—when you are talking about blackmail, you're also talking about all this publicity that was going on, aren't you?

Mr. FAIRCHILD. Well, the publicity wasn't blackmail, I thought they wanted money.

Mr. STEWART. OK. One of the things you wanted, though, in the case at the time you talked to Judge Nixon was to have Bud Holmes live up to his plea bargain, isn't that right?

Mr. FAIRCHILD. Yeah.

Mr. STEWART. OK. You wanted him to live up to that plea bargain and you weren't looking for anything else for Drew Fairchild, is that right?

Mr. FAIRCHILD. That's the best of my memory, really.

Mr. STEWART. OK. Now, let me ask you about the phone call—now, I think you said that this conversation with Judge Nixon probably wasn't more than 15 or 20 minutes, does that sound right?

Mr. FAIRCHILD. I don't think it was that long.

Mr. STEWART. Now, the phone call that night, I think you testified before that your wife might have answered the phone. You don't remember whether you answered the phone or not?

Mr. FAIRCHILD. No, I don't. Usually when it rings, if I pick it up and she has already picked it up, then she will hang up if they ask for me.

Mr. STEWART. OK. But you don't have any recollection one way or another about that night, do you?

Mr. FAIRCHILD. No.

Mr. STEWART. And she could have picked up the phone? She does sometimes, doesn't she?

Mr. FAIRCHILD. Yes, she does.

Mr. STEWART. Now, you were drifting off to sleep when the call came in, isn't that right?

Mr. FAIRCHILD. I probably was, yes.

Mr. STEWART. OK. That's what you testified at the trial. Do you remember that? Do you remember that?

Mr. FAIRCHILD. Yeah.

Mr. STEWART. Now, in this conversation on the telephone—and I take it that just takes a couple of minutes, isn't that right? It's a short conversation, that call?

Mr. FAIRCHILD. Yes.

Mr. STEWART. Would it be fair to say that you get the message that Judge Nixon and Bud Holmes have talked about your blackmail allegation?

Mr. FAIRCHILD. Repeat the question.

Mr. STEWART. Would it be fair to say that you get the message in that conversation that Judge Nixon and Bud Holmes have talked between themselves about the blackmail allegation?

Mr. FAIRCHILD. Yeah. Yes.

Mr. STEWART. OK. And that is what your understanding was, that they talked about your blackmailing suspicions?

Mr. FAIRCHILD. Yes, I could tell from the conversation they had.

Mr. STEWART. OK. And the message you get out of it is that the blackmailing problem is going to go away, isn't that right?

Mr. FAIRCHILD. Yeah. Yeah.

Mr. STEWART. You didn't get any other message out of it, did you?

Mr. FAIRCHILD. I can't recall, if I did, I've forgotten about it.

Mr. STEWART. I want to ask you about some things that were not said on that telephone call. Now, there was no mention in the call, was there, about passing the case to the files?

Mr. FAIRCHILD. No.

Mr. STEWART. OK. And you don't recall any statement by Judge Nixon, do you, that he was real grateful for the chance to invest with you, because he had so many children to educate?

Mr. FAIRCHILD. He could have said something about it, but I don't remember if he did.

Mr. STEWART. Well—

Mr. FAIRCHILD. I don't remember at this time, but if I testified back when my memory was better than it—

Mr. STEWART. Well, let's see if we can refresh your memory a little bit. The question was asked: "You don't have any recollection"—this is at page 210 of the House hearings—"You don't have any recollection that Judge Nixon, when he was on the phone, said I want to thank you for the investment and I've got all these children to get through college and you've been so good to me." He didn't say that is the question, and your answer was no. Does that refresh your recollection, that he didn't say anything like that on the phone?

Mr. FAIRCHILD. That's right, I don't remember him saying anything.

Mr. STEWART. Mr. Fairchild, I want to take a run at figuring out something about the date of the phone call, and I'm not going to take a whole long time on it, because I know there's been a lot of figuring out about it. First, let's try to get the sequence down. I think we just went through it. You got the visit from Bob Royals, do you remember that?

Mr. FAIRCHILD. Yeah.

Mr. STEWART. OK. He tells you he's been off to Maxwell Air Force Base with Bill Porter and they visited Joe Krohn. Do you remember that?

Mr. FAIRCHILD. Yeah.

Mr. STEWART. OK. And I think before the lunch break, you said that shortly after that you called Judge Nixon or think you called him.

Mr. FAIRCHILD. To the best of my memory——

Mr. STEWART. It was just a couple of days after that, after Mr. Royals came by?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK. And you saw Judge Nixon just a couple of days after that?

Mr. FAIRCHILD. Yes.

Mr. STEWART. And you were shown a phone record for December 1, 1982, and you said you thought maybe that was the call. Do you remember that?

Mr. FAIRCHILD. Yes.

Mr. STEWART. Now, are you sure that was the call?

Mr. FAIRCHILD. Well, I'm not positive.

Mr. STEWART. What makes you think it was?

Mr. FAIRCHILD. Well, just my memory is that I called him and I called him, Carroll was supposed to call him and didn't, and after I called him, he come up there, the best of my memory, right after that.

Mr. STEWART. OK. I want to try to use the board here for a second.

Now, let me just ask you first about that phone call. The phone number that is on the bill is the phone number for Fairchild Construction Company, isn't it?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK. And lots of employees have access to the phones at that number, don't they?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK. So somebody else could have called Judge Nixon, isn't that right? It didn't have to be you?

Mr. FAIRCHILD. That's right.

Mr. STEWART. And Judge Nixon had a business relationship with you at the time, with the investments, isn't that right?

Mr. FAIRCHILD. Yes.

Mr. STEWART. And there were conversations back and forth between his secretary and your staff, isn't that right, about interest payments, about royalty payments?

Mr. FAIRCHILD. Yes.

Mr. STEWART. So that phone call could have been by any of your employees on those other matters, couldn't it?

Mr. FAIRCHILD. Well, it could have been but my memory, I called him myself, or called his secretary and told him I want——

Mr. STEWART. OK, that is fine. Let me just stay with this.

December 1 is that phone record. Now you say a few days before that Bob Royals came to see you, you remember that?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK. A matter of what, five days, two days, in that neighborhood?

Mr. FAIRCHILD. Well, two or three days, yes.

Mr. STEWART. So, if we say November 25, that gives us plenty of time?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK. And I realize that is not the exact date. It is just a general time.

And he says that he has just been to Maxwell Air Force Base to visit Joe Krohn, right?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK. So he has just been there a day or two before then, right?

Mr. FAIRCHILD. Well, I don't know whether he has been there or not. That is what he told me, he had been there.

Mr. STEWART. OK. So that is November 18th say, something like that?

Mr. FAIRCHILD. Yes.

Mr. STEWART. Now, Mr. Fairchild, what I was hoping you could explain here is how this sequence works. Because there is an exhibit in our materials, exhibit 44, I am going to read to you the passage. It is an FBI record.

It says that "The FBI has determined"—this is on page 3 of exhibit 44. "The FBI has determined that on June 22, 1982, Joe Krohn was transferred from the Maxwell facility to the Salvation Army Halfway House in Pascagoula, Mississippi."

So, in May 1982 Joe Krohn left Maxwell. He is not there anymore. Five months before you think he was visited he is gone.

Then it goes on and says "where he remained in Pascagoula until released in October." So in October he is out of custody altogether.

Now how can you explain Mr. Royals visiting him at a prison he was released from five months beforehand?

Mr. FAIRCHILD. Well, what I have testified is, and I have attempted to testify to the truth and this is just what I remember.

Mr. STEWART. Does this information suggest to you that maybe you are wrong about that December 1 phone call? Maybe you got the sequence off?

Mr. FAIRCHILD. Well, it could have been but I just don't think so.

Mr. STEWART. And you have no idea—can you explain how Mr. Royals was going to visit Joe Krohn in a prison he wasn't in?

The CHAIRMAN. Mr. Stewart, that is the third time. The first time he answered your question specifically. That Royals told him he had been to visit Krohn but he had no way of verifying that. And you went over that again. We are not going to go over it the third time. He has been very clear in his response to you that he was told that Krohn visited—that Royals visited Krohn but he had no way of knowing whether that was true or not. Move on to something else.

Mr. STEWART. Now, Mr. Fairchild, I believe it has been your testimony that there was a great deal of publicity about Drew's case after it was passed to the files in January 1983.

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK. And you testified at trial that there wasn't any real publicity about the case in 1982. Do you remember that?

Mr. FAIRCHILD. No, I don't. But if I testified to it, well it was so.

Mr. STEWART. OK. So if it says that at page 629 of the trial transcript you accept that as your best recollection now?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK. Drew had back surgery that year, do you remember that?

Mr. FAIRCHILD. Yes.

Mr. STEWART. And he had a long recuperation, didn't he?

Mr. FAIRCHILD. Huh?

Mr. STEWART. He had a long recuperation, didn't he?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK. So it was necessary to put the case off over and over and there wasn't much going on in the case, was there?

Mr. FAIRCHILD. No.

Mr. STEWART. OK. I wanted to try to approach this from one other angle. You have said now that you told Judge Nixon that you thought Carroll Ingram might be involved in blackmailing.

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK. And Mr. Ingram was not involved in representing Drew in 1981 or 1982?

Mr. FAIRCHILD. No. He might have went to Carroll and Carroll got him to go to Bill Porter. I don't remember. No.

Mr. STEWART. OK. But still you told Judge Nixon—well, strike that.

Do you recall what fact it was that raised suspicion in your mind? I think you testified to this just a little while ago. That you got suspicious about Carroll Ingram because he brought the order passing the file to you.

Mr. FAIRCHILD. Well, me and him was real close and him and Bud was real close and I just knew something was wrong.

Mr. STEWART. OK. And when he brought that order to you that is when you realized there was a problem or might be a problem? Is that fair?

Mr. FAIRCHILD. There had been a problem, yes.

Mr. STEWART. OK. And before that you didn't have any basis for suspecting Carroll Ingram, did you?

Mr. FAIRCHILD. No.

Mr. STEWART. Does that help you, Mr. Fairchild, in placing it, this phone call, this conversation with Judge Nixon? Because you told Judge Nixon Carroll Ingram was involved and you didn't suspect he was involved until he delivered this order passing the files to you.

Mr. FAIRCHILD. I told Judge Nixon I thought Carroll Ingram was involved. But no, I can't help you out on them dates and them phone calls. What I have testified at the trial and the congressional committee is just the best of my recollection and I think it is so.

Mr. STEWART. A couple of points I want to hit on quickly here. Now you made a big profit on the oil properties you sold to Judge Nixon, didn't you?

Mr. FAIRCHILD. Yes.

Mr. STEWART. You calculated the profits. It is included, you remember that sheet that was prepared by your staff that was included and is our exhibit 32A. Now you remember the profit was in the thousands of percents, 8,000 percent on one property?

Mr. FAIRCHILD. Yes, it was way up there. I saw it after they calculated it.

Mr. STEWART. OK. And the price charged to Judge Nixon was a fair price?

Mr. FAIRCHILD. It was what?

Mr. STEWART. It was a fair price?

Mr. FAIRCHILD. Well, I could have gotten more for it, and I went out—it would have been somebody that went out and got an oil deal and went out and peddled it for a profit. Yes, I could have got more for it.

Mr. STEWART. My question was, was it a fair price? Is your answer yes or no?

Mr. FAIRCHILD. Depending on how you look at it.

Mr. STEWART. Do you remember testifying that it was a fair price before?

Mr. FAIRCHILD. Yes. Under certain circumstances it would be a fair price.

Mr. STEWART. So you don't want to repudiate your testimony before that it was a fair price?

Mr. FAIRCHILD. Well, if I testified to that. But I have always contended that I could have gotten more.

The Chairman. We believe your characterization of the prior testimony, Mr. Stewart.

Mr. STEWART. OK.

The Chairman. Move on.

Mr. STEWART. And you have testified on a number of occasions, have you not, that the sale of the oil properties to Judge Nixon had nothing to do with Drew Fairchild's case? Is that true?

Mr. FAIRCHILD. That is true.

Mr. STEWART. OK. And it had nothing to do with Drew's case, did it?

Mr. FAIRCHILD. No, absolutely nothing.

Mr. STEWART. And nothing that was done in connection with the investment had anything to do with Drew's case, isn't that right?

Mr. FAIRCHILD. No. That's right.

Mr. STEWART. OK. And in fact, you told the grand jury when you appeared before them in July that you had never discussed Drew's case with Judge Nixon, isn't that right?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK. And you repeated that testimony when you appeared before the House, didn't you, that you had never discussed Drew's case with Judge Nixon?

Mr. FAIRCHILD. I think I did. Yes.

Mr. STEWART. OK. And that is true, isn't it?

Mr. FAIRCHILD. Other than when he come there and I told him I thought they was blackmailing. That is the only time I have ever discussed it with him.

Mr. STEWART. Well, you didn't qualify what you said the other times, and I am curious about that. Did you think that was a discussion of blackmail?

Mr. FAIRCHILD. No, I—no. What I said is they wasn't doing my son right and if they would go ahead and prosecute Bob Royals, they was in business together at the airport and one of them is just as guilty as the other, and they wouldn't hear a damn word out of

me. And that is the only time that I have discussed the *Drew Fairchild* case with the judge.

Mr. STEWART. Excuse me for one second, Mr. Chairman.
[Pause.]

Mr. STEWART. Do you recall being asked these questions before the grand jury in July? Did you ever discuss Drew's case with Judge Nixon? And you answered, "No, I don't recall ever discussing it with Judge Nixon"?

Mr. FAIRCHILD. That's right.

Mr. STEWART. OK. And was that true testimony?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK. Then in the House you were asked these questions at page 195. You also testified yesterday you never did discuss with Judge Nixon possibly whether Drew's case could be passed to the files. That that never came up. Your answer was no.

Question was, "Is that correct?" And then you said, "No, I never did discuss Drew's case with Judge Nixon."

Was that accurate testimony at the time?

Mr. FAIRCHILD. Well, as I said a while ago, I talked to him about this blackmail thing.

Mr. STEWART. OK.

Mr. FAIRCHILD. To that extent, and that is the only.

Mr. STEWART. Right. But you were drawing a distinction there between the blackmail suspicion and talking about Drew's case, trying to get something for Drew, isn't that right?

Mr. FAIRCHILD. Yes.

Mr. STEWART. Because when you talked to him about the blackmail, you really weren't trying to get anything for Drew. You were trying to get Bud Holmes off of your back, weren't you?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK. And I believe you were asked in the July grand jury, the first time you went to the grand jury you were asked about your contact with Bud Holmes about Drew's case. Do you remember that?

Mr. FAIRCHILD. I remember testifying but I don't remember. But maybe if you can refresh my memory.

Mr. STEWART. OK. Page 94 of your testimony is our exhibit 30. The question was, before the grand jury, "Have you had any other contact with Bud Holmes in reference to Drew's case?" And the answer was, "One time." Then you went on and described a visit by Judge McKenzie and Bud Holmes in December 1983. I am not going to read it all, it goes on for a while.

Mr. FAIRCHILD. Yes.

Mr. STEWART. But my question was you didn't mention there the conversation on the phone that concerned blackmail, did you?

Mr. FAIRCHILD. No.

Mr. STEWART. OK. And that was because that was a different subject in your mind, wasn't it?

Mr. FAIRCHILD. Yes.

Mr. STEWART. Now, you didn't mention this phone call that happened to the grand jury or to the FBI when they came to interview you, did you?

Mr. FAIRCHILD. No. And the reason I didn't I had forgotten all about the phone call.

Mr. STEWART. Just wasn't that big a deal to you, was it?

Mr. FAIRCHILD. No. It was just something routine.

Mr. STEWART. OK. And when you—excuse me. I am skipping questions. It is a good sign sometimes when I skip.

Let me ask you about that statement by Judge Nixon that you remembered. That he said he would help you if he could and if he couldn't help you he would just tell you that. You remember that?

Mr. FAIRCHILD. Yes.

Mr. STEWART. That was one of those things that sticks in your mind, isn't it?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK. You didn't think he was offering to do anything illegal for you, did you?

Mr. FAIRCHILD. No.

Mr. STEWART. OK. You didn't think he was offering to do anything improper or wrong, did you?

Mr. FAIRCHILD. No.

Mr. STEWART. You just understood it as a statement of personal courtesy between two men doing a business deal, isn't that right?

Mr. FAIRCHILD. Yes.

Mr. STEWART. Mr. Fairchild, I am going to switch subjects again. I want to ask a bit more about the investigation, the Federal investigation of Judge Nixon.

You went to testify before the grand jury in July 1984. You remember that first grand jury appearance?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK. And you went down to the courthouse to testify and you didn't even bring a lawyer with you, did you? John Baltar came with you, didn't he?

Mr. FAIRCHILD. Yes.

Mr. STEWART. Now, he was your administrative assistant, right?

Mr. FAIRCHILD. Well, he is more or less a P.R. man.

Mr. STEWART. OK. He worked for you as an employee?

Mr. FAIRCHILD. Yes.

Mr. STEWART. And you didn't bring a lawyer with you because you didn't think you had done anything wrong, isn't that right?

Mr. FAIRCHILD. Repeat that now.

Mr. STEWART. You didn't bring a lawyer with you because you didn't think you had done anything wrong?

Mr. FAIRCHILD. That is right.

Mr. STEWART. OK. And when you testified before that grand jury in July you answered all the questions that they asked, isn't that right?

Mr. FAIRCHILD. Yes.

Mr. STEWART. You told the truth as best you could?

Mr. FAIRCHILD. Yes.

Mr. STEWART. And six weeks later you got indicted, isn't that right?

Mr. FAIRCHILD. Yes.

Mr. STEWART. Now, did you expect to be indicted?

Mr. FAIRCHILD. No.

Mr. STEWART. Didn't that indictment just send you into a state of shock?

Mr. FAIRCHILD. Yes.

Mr. STEWART. You had no indication it was coming, did you?

Mr. FAIRCHILD. No.

Mr. STEWART. Did you think you had committed a crime?

Mr. FAIRCHILD. No.

Mr. STEWART. Did you have any idea how you could be indicted under those circumstances?

Mr. FAIRCHILD. No.

Mr. STEWART. Were you afraid?

Mr. FAIRCHILD. No, I wasn't until I got indicted.

Mr. STEWART. When you got indicted, were you afraid then?

Mr. FAIRCHILD. Yes.

Mr. STEWART. Now, you retained some lawyers when you got indicted, isn't that right?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK. One of them was Mr. Aarondahl, from Mobile?

Mr. FAIRCHILD. Yes.

Mr. STEWART. Turned out Mr. Aarondahl didn't have any experience in criminal cases, isn't that right?

Mr. FAIRCHILD. That's right.

Mr. STEWART. OK. And Mr. Aarondahl informed you that you were guilty, didn't he?

Mr. FAIRCHILD. Yes.

Mr. STEWART. And you didn't understand how you could be guilty still, did you?

Mr. FAIRCHILD. No.

Mr. STEWART. But your lawyer told you that so you decided you would try to make a deal with the government, isn't that right?

Mr. FAIRCHILD. Well, here is the exact words. He said I was "guilty as hell." And that is why I made a deal.

Mr. STEWART. OK. And the answer from the government prosecutors, when you approached them through Mr. Baltar or Mr. Aarondahl or whoever, was that you had to give them a smoking gun on Judge Nixon, isn't that right?

Mr. FAIRCHILD. Repeat the question.

Mr. STEWART. The response from the prosecutors when you were trying to negotiate a deal was that you had to come up with a smoking gun on Judge Nixon?

Mr. FAIRCHILD. Yes.

Mr. STEWART. And you understood that a smoking gun on Judge Nixon would be something real damaging to Judge Nixon?

Mr. FAIRCHILD. Yes.

Mr. STEWART. Did you try to come up with a smoking gun on Judge Nixon?

Mr. FAIRCHILD. Well, I lay awake at night thinking what could have transpired, and I thought of that telephone call.

Mr. STEWART. And you told your lawyers and you told Mr. Baltar about the phone call, didn't you?

Mr. FAIRCHILD. Yes.

Mr. STEWART. Remember what you told them about the call?

Mr. FAIRCHILD. Just as I have testified here and before.

Mr. STEWART. I want to ask about that. Do you recall whether you told them that it was Bud Holmes who had placed the phone call?

Mr. FAIRCHILD. I don't remember telling them that.

Mr. STEWART. Let me see if I can refresh your recollection with the grand jury transcript, testimony of Karl Kepper. He was one of your lawyers at the time, wasn't he?

Mr. FAIRCHILD. Yes.

Mr. STEWART. He is a lawyer in Hattiesburg, right?

Mr. FAIRCHILD. Yes.

Mr. STEWART. This is exhibit 47, and I am at page 10. Mr. Kepper is describing what you said, down at line 15. He said, "Bud Holmes called me one night around 7 or 7:30 and told me everything was going to be all right. You know, I talked to the man and he said everything is going to be all right. You don't have to worry about your boy. He said that about that time it sounded like Judge Nixon got on the phone. He said he heard this voice and it sounded like Judge Nixon's voice."

Does that refresh your recollection at all that it was Bud Holmes who placed the call, not Judge Nixon?

Mr. FAIRCHILD. No. I don't remember it that way.

Mr. STEWART. Let me just try one more. This is an FBI memo. It is exhibit 36. It is dated November 2nd.

Do you remember going up and talking to the FBI and the prosecutors and giving what was called a proffer of testimony to them before you cut your deal?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK. And you talked about all these things at that time, didn't you?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK. This is a memo about that meeting. It says that—it attributes to you, that you were "telephonically contacted by former Forrest County, Mississippi, District Attorney Paul Bud Holmes and subject Nixon, who was on an extension phone with Bud Holmes, during which conversation they discussed the handling of Fairchild son's case."

Does that help refresh your recollection that it was Mr. Holmes who placed the call?

Mr. FAIRCHILD. No. If Bud placed the call, I just don't remember.

Mr. STEWART. OK. Then at that point your lawyers and Mr. Baltar approached the Federal Government with this information about the phone call; correct? After you have told them about the phone call?

Mr. FAIRCHILD. Yes.

Mr. STEWART. All right. And then you go up for this proffer meeting. It is dated November 1, and you remember that in the Federal Building in Jackson; correct?

Mr. FAIRCHILD. Yes.

Mr. STEWART. Now, you met with Mr. Reid Weingarten, right?

Mr. FAIRCHILD. Yes.

Mr. STEWART. And Weldon Kennedy of the FBI?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK. Were you scared when you met them?

Mr. FAIRCHILD. Well, I wasn't comfortable, no.

Mr. STEWART. Were you afraid of Mr. Weingarten?

Mr. FAIRCHILD. I don't know how to answer that. I knew he had a job to do, but I felt like I had been done wrong and I didn't know what was going to happen in the future.

Mr. STEWART. Do you recall testifying before the House that Mr. Weingarten just scared you?

Mr. FAIRCHILD. Well, if I testified, well I was. I will stick by my testimony.

Mr. STEWART. OK. And you testified about that at the post-conviction hearing in Jackson last August, didn't you?

Mr. FAIRCHILD. I don't remember it. I guess I did.

Mr. STEWART. Well, I mean, let's look at it. You were under indictment, weren't you, at the time?

Mr. FAIRCHILD. Yes.

The CHAIRMAN. It is on the record. It is shown he said over and over again that he was scared after he got indicted.

Mr. STEWART. All right. Now, when you met with these investigators at that time, your major priority at that time was to stay out of prison, wasn't it?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK. And you met in Mr. Kennedy's office, the FBI agent, and talked to him for a while, isn't that right?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK. During that initial conference in Mr. Kennedy's office you talked over all these things that you had been trying to think up, lying awake nights trying to think up; isn't that right?

Mr. FAIRCHILD. Yes.

Mr. STEWART. That included the phone call, is that right?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK. And there was some back and forth conversation between you and the prosecutors concerning that information you were giving them; correct?

Mr. FAIRCHILD. Yes. My lawyers were doing most of the talking.

Mr. STEWART. And after a while you went into the next room and a tape-recorded statement was made; correct?

Mr. FAIRCHILD. Yes.

Mr. STEWART. All right. Now, I want to ask you about one point. It is not directly on an issue here but I just want to ask you about how your testimony developed on it.

You were questioned then and you remember about when Carroll Ingram approached you concerning selling oil interests to Judge Nixon? You remember being questioned about that?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK. When you spoke to the FBI in April 1984 you said that Mr. Ingram had approached you in 1979. Do you remember that? It is exhibit 27. I can show it to you.

Mr. FAIRCHILD. Yes. Late 1979 or early 1980.

Mr. STEWART. OK. Do you remember that at that meeting with Mr. Weingarten in Jackson on November 1st he told you that that couldn't be right. That it had to have happened after Drew's bust, after the bust at the airport. It had to be after August 1980. Remember him telling you that?

Mr. FAIRCHILD. He could have. I don't specifically remember it.

Mr. STEWART. OK. At page 197 of the post-conviction transcript, the question was—the statement is made to you, it is about the proffer meeting on November 1st. The statement is made to you that that is what you should say. That the approach from Carroll Ingram occurred after the drug bust.

Your answer was, “Yes. It was said in the presence there of John Baltar.”

The question was, “All right. And did Mr. Weingarten say that?”

And your answer was, “To the best of my memory, yes, it was him.”

Does that help refresh you that that is what happened, he told you that it must have happened after August 1980?

Mr. FAIRCHILD. I remember the conversation but I don’t remember no specifics of it.

Mr. STEWART. So we will just have to go on whatever your testimony was last August. You remembered it better back then.

Mr. FAIRCHILD. Well, I don’t specifically remember him saying that I would have to say something.

Mr. STEWART. Well, do you want to take back that testimony?

Mr. FAIRCHILD. No. I just—there is something about that there that I am confused. I just don’t remember it.

Mr. STEWART. Well, do you remember—I am going to change to another subject here.

The CHAIRMAN. Before you go to another subject, Mr. Stewart, approximately how much longer? I just feel a little constrained as to whether or not I ought to give the witness a break.

Mr. STEWART. Mr. Chairman, I would welcome a break. It is going to be about another 20 minutes I guess, and it would help me organize myself to focus this.

The CHAIRMAN. Mr. Fairchild, would you like to go on for another 15 or 20 minutes or do you want a break now?

Mr. FAIRCHILD. I would like to go on.

The CHAIRMAN. Go on.

Mr. STEWART. It is probably like this when you got to negotiate with him too.

All right. I wanted to ask you about placing the phone call. Who made the phone call?

Mr. FAIRCHILD. Who made what phone call?

Mr. STEWART. Who made the phone call to you from Mr. Holmes’ farm that night?

Mr. FAIRCHILD. From Judge Nixon.

Mr. STEWART. No. I understand you are going to say that.

Do you recall that the prosecutor told you that Judge Nixon must have placed the call?

Mr. FAIRCHILD. He could have said that. I just don’t know.

Mr. STEWART. Do you recall whether you had to change your testimony in order to say that to please the prosecutor?

Mr. FAIRCHILD. No, I didn’t. I have tried to testify the truth all the way through, and I get confused and some of these dates I just don’t remember.

Mr. STEWART. Let’s talk about dates. It is the last subject I wanted to cover on this area.

The date of the phone call, that phone call, you remember Mr. Weingarten telling you that it had to have happened before Drew's case was passed to the files?

Mr. FAIRCHILD. He could have said that, but I specifically don't remember it.

Mr. STEWART. If you remembered it back in Jackson last year, would you say your testimony then was accurate?

Mr. FAIRCHILD. Well, I have never been as confused in my life as I was at that hearing in Jackson. I may have got some things wrong but it wasn't intentionally. I was just confused.

Mr. STEWART. Well, you were trying to tell the truth then, weren't you?

Mr. FAIRCHILD.—Yes. I always have.

Mr. STEWART. You weren't intentionally lying about anything?

Mr. FAIRCHILD. No.

Mr. STEWART. OK. I wanted to ask you about this testimony here and see if this is testimony that was true at the time. It is at pages 201 and 202.

The question was, "Was it before or after the case was passed to the files when you got the phone call?"

The answer was, "To the best of my recollection, my brother was in there when me and Judge Nixon was talking and he says it was made after it was passed to the files."

Question: "What's your recollection?"

"The best of my recollection is it was made after it was passed to the files."

Mr. FAIRCHILD. Well, I was going strictly on what my brother Rodney had said.

Mr. STEWART. Do you recall that three days before you gave that testimony on that Friday that you met with me and other counsel for Judge Nixon in your office?

Mr. FAIRCHILD. Yes.

Mr. STEWART. And we asked you that question then didn't we, if you had—when the case was passed to the files? You remember that?

Mr. FAIRCHILD. No, I don't remember you asking me that in the office.

Mr. STEWART. You don't remember that we asked you if the prosecutor had urged you to—if you had lied at trial in order to please the prosecutor? You don't remember us asking that question?

Mr. FAIRCHILD. No. You could have but I don't remember it.

Mr. STEWART. So you don't remember confirming to us on that Friday in your office that the prosecutor—

Mr. FAIRCHILD. No.

Mr. STEWART. That you had lied at trial to please the prosecutor?

Mr. FAIRCHILD. No, I don't remember telling you all that.

Mr. STEWART. And so any testimony that you gave in Jackson at the post-conviction hearing that you lied at trial to please the prosecutor you now want to repudiate; is that right?

Mr. FAIRCHILD. Well, I just don't remember what I said there in Jackson about that.

The CHAIRMAN. Let's see if we can wrap it up, Mr. Stewart. There will be direct and recross I am sure.

Mr. STEWART. Let me try to focus just a minute here, if I might, Mr. Chairman.

When you went for that proffer, it is exhibit 35, the tape recording made of your statement after you were through in Agent Kennedy's office, you remember that; correct?

Mr. FAIRCHILD. Yes.

Mr. STEWART. OK. Page 7 of that transcript, you say, beginning at the bottom of page 6, "One of the things that he told me about"—this is Carroll Ingram—"that I called his wife and told her Carroll had brought me a copy of this thing where it had been passed to the files. See, his case had been passed to the files. She come over there and got it but these—that's on December 23. But anyway, we've been trying to get some dates from Maxwell Air Force Base. A day that Bob Royals and Bill Porter went over there and spent one weekend to see Joe Kröhn."

So you were trying at that time, were you not, to pin it down. The one thing you remembered was that the phone call was related to the visit from Bob Royals; correct? Is that accurate?

Mr. FAIRCHILD. Yes, that's accurate. I thought it was—what Bob Royals told me was true.

Mr. STEWART. OK. But you have always pinned it to that event. That is what you remember, the visit from Bob Royals; correct?

Mr. FAIRCHILD. Yes.

Mr. STEWART. And you didn't actually associate it much with the passing of the case to the files one way or another?

Mr. FAIRCHILD. Repeat that question.

Mr. STEWART. You didn't associate the phone call, when you were first trying to remember it you didn't associate it one way or another with whether—with passing the case to the files?

Mr. FAIRCHILD. When Judge Nixon called me?

Mr. STEWART. Yes.

Mr. FAIRCHILD. No, I didn't associate that because to the best of my recollection it hadn't been passed to the files.

Mr. STEWART. OK. Just a couple more things, Mr. Fairchild. I want to direct your attention to a couple of exhibits. The first is exhibit 37. Would you like me to help you find it?

Mr. FAIRCHILD. In which one?

Mr. STEWART [indicating to the witness]. Do you recall seeing exhibit 37 before?

Mr. FAIRCHILD. I don't remember seeing it before. I could have.

Mr. STEWART. Do you recall testifying about it at the hearing in Jackson and saying that that was a piece of paper that had been prepared for you to help you prepare to testify before the grand jury after you made your deal in November 1984?

Mr. FAIRCHILD. Well, what I said in Jackson and what I said a while ago, I just don't remember what went on in Jackson.

Mr. STEWART. So, when you look at this document now, though, exhibit 37, you don't recognize it at all?

Mr. FAIRCHILD. Well, it just don't ring a bell with me. I could have saw it before, but it just don't ring a bell with me.

Mr. STEWART. So, if you described it for us last year, when you testified, if you described that as a paper that was prepared for you to help you testify, you wouldn't dispute that testimony, would you?

Mr. FAIRCHILD. When was this prepared?

Mr. STEWART. You testified last year that it was prepared in November 1984, right before your second visit to the grand jury.

Mr. FAIRCHILD. I just don't remember. I'm sorry, I just don't remember it.

Mr. STEWART. No recollection of it?

Mr. FAIRCHILD. No.

Mr. STEWART. Let me ask you to look in the other volume, at exhibit 59. Do you remember that document, exhibit 59?

Mr. FAIRCHILD. Yeah.

Mr. STEWART. What is it?

Mr. FAIRCHILD. Well, what do you want to know about this?

Mr. STEWART. What is the document? When have you ever seen it before?

Mr. FAIRCHILD. Well, it's the relationship with Drew, relationship with Carroll and with Bud.

Mr. STEWART. Mr. Fairchild, I wasn't asking you to read it. I was asking you what it is. Have you ever seen it before?

Mr. FAIRCHILD. I could have, but I just don't remember.

Mr. STEWART. You have no recollection of ever seeing that before?

Mr. FAIRCHILD. Well, I could very well have saw it before, but right now I'm getting more confused as the time drags on, but I just don't remember.

Mr. STEWART. Would you give me a moment, Mr. Chairman?

The CHAIRMAN. Yes.

[Pause.]

Mr. STEWART. Mr. Fairchild, after the hearing in Jackson last summer, did you get scared again that you might be in more trouble because you had admitted that you hadn't told the truth at trial?

Mr. FAIRCHILD. Well, what come out in the paper just was not the way that I intended to testify, because I was basing it on what Rodney had said.

Mr. STEWART. So, is the answer to my question that, yes, you did get scared?

Mr. FAIRCHILD. Well, I was concerned when I read the paper the next morning, it wasn't nothing like I thought I testified, just absolutely, because I—based on what Rodney had said.

Mr. STEWART. All right. There are no further questions.

The CHAIRMAN. Does the House wish to have further redirect?

REDIRECT EXAMINATION

Mr. EDWARDS. Three very short questions, Mr. Chairman.

The CHAIRMAN. Please, Mr. Edwards.

Mr. EDWARDS. Mr. Fairchild, after Judge Nixon's phone call, a few days later you met with Judge Nixon in your office and discussed the blackmail concerns you had that were in connection with Drew's case. Was that the only thing that you and Judge Nixon discussed that afternoon?

Mr. FAIRCHILD. That's the only thing that I remember.

Mr. EDWARDS. And what was the tone of your conversation with Judge Nixon, your tone? Were you serious, were you angry?

Mr. FAIRCHILD. I was real angry, yes.

Mr. EDWARDS. Then, that night, when you got the call from Judge Nixon, you talked to him on the telephone, and his message was to you about Drew's case. Did that relieve your concerns about how Bud Holmes was handling Drew's case?

Mr. FAIRCHILD. Yes.

Mr. EDWARDS. No further questions, Mr. Chairman.

The CHAIRMAN. Anything else, Mr. Stewart?

Mr. STEWART. None, Mr. Chairman.

The CHAIRMAN. Mr. Danforth will inquire.

EXAMINATION BY THE COMMITTEE

The VICE CHAIRMAN. Mr. Fairchild, going back in time in your own mind to the day of your meeting with Judge Nixon, when later that day you got a phone call and you spoke on the phone with Mr. Holmes and with Judge Nixon, putting yourself back in time at that day, what was your relationship with your son at that time?

Mr. FAIRCHILD. It was bad.

The VICE CHAIRMAN. How long had it been bad?

Mr. FAIRCHILD. Well, for some time, when he got indicted, I paid \$2,600 and I didn't let him know about it, I mean paid before he got indicted. After he got indicted, I had him sell everything that he had he could sell to get up to \$7,500, and I mean everything, but I didn't ask him to put a mortgage on his house.

The VICE CHAIRMAN. Prior to the time of his criminal problem relating to the shipment of marijuana, what was your relationship with him?

Mr. FAIRCHILD. Well, it's been off and on, mostly off. He's more or less—he gave me trouble from the time he was a teenager. We didn't live together. In fact, he was 9 years old before I ever saw him, and then his mother died and, when I did see him, I helped him and helped him, and then I just tried to send him to school and he wouldn't go. But it has never been good and I gave him a job three times and he'd work and get a little bit ahead and then he'd quit.

The VICE CHAIRMAN. When he was arrested, what were your thoughts at that time?

Mr. FAIRCHILD. Of course, I was real embarrassed and, of course, thinking day and night what I could do about it. Then, of course, it dragged on all these years and—

The VICE CHAIRMAN. What did you mean when you said you were thinking day and night about what you could do about it?

Mr. FAIRCHILD. Yeah, what I could do about it, what we could do about it to more or less clear up the Fairchild name. I was concerned with that more than I was Drew.

The VICE CHAIRMAN. When you complained to various people, including Judge Nixon, that you thought you were being blackmailed, what did you mean by that? Why did you think you were being blackmailed?

Mr. FAIRCHILD. Well, the case had gone off and on, and Carroll Ingram and George Phillips was real good friends and me and George Phillips was real good friends, and when he made a deal with Drew and his lawyer, Bill Porter, I was shocked to find out

that Bill Phillips didn't live up to that agreement, and I understand that—I figured that Carroll that was as good friend of Bill Phillips, and it just shocked me when it come back down to the State courts, that just didn't look right to me at all and he had a plea bargain agreement with George Phillips and George signed it. When he got that, I figured that was the end of it.

The VICE CHAIRMAN. Mr. Stewart makes a very sharp distinction between discussions about blackmail, on the one hand, and discussions about your son's case, on the other hand. When you talked to Judge Nixon about blackmail, were you talking about something other than your son's case?

Mr. FAIRCHILD. No. No.

The VICE CHAIRMAN. Did you talk to Judge Nixon about your son's case?

Mr. FAIRCHILD. Well, just what I testified here and in the past, that I figured that Bud Holmes was picking on him just because I had money and that—

The VICE CHAIRMAN. Were you interested in your son's case or were you interested in just hanging onto some money?

Mr. FAIRCHILD. Oh, no, I was just interested in clearing up the Fairchild name. Drew, my son, I wasn't interested in him, because I had told him that if he ever got into serious trouble, he was going to have to get out, and that's why I made him sell everything that he had.

The VICE CHAIRMAN. I'm confused and I'd like you to try to help me with my confusion. You had a meeting with Judge Nixon the same day that he later talked to you on the telephone.

Mr. FAIRCHILD. Right.

The VICE CHAIRMAN. That meeting was in your office.

Mr. FAIRCHILD. Right.

The VICE CHAIRMAN. Now, I can't understand whether you're telling me that you talked to him about your son's case, you expressed concern that the Fairchild name was being damaged, your reputation was being damaged, that you were very concerned that the case be put to rest, or, in the alternative, that you really didn't care about your son any more, that you didn't have a good relationship with your son any more—

Mr. FAIRCHILD. Well, of course—

The VICE CHAIRMAN [continuing]. That he had to take care of his own problem, but that somehow this case was being used as a way of blackmailing you, getting some money out of you, which is what I understand you mean by blackmail.

Mr. FAIRCHILD. Yes, I thought that was what it was. You see, Bob Royals, I thought Bud Holmes had sent him out there, you see, and so—but the one thing that was in the paper all the time about my son and Bob Royals, him and my son was in 50-50 at the airport. They knew all about that, but they didn't prosecute him, he didn't have no money. He couldn't have raised \$1,000, and that was what made me real mad, they were just picking on my son, you see. And I thought, just because they had some money, and if I had went ahead, when Bob Royals approached me, if I had went ahead and paid that \$10,000, I don't think we would be here talking today, I think the first time it would have been settled.

The VICE CHAIRMAN. You think the lawyer was just trying to get the \$10,000 out of you, and that Holmes was helping him?

Mr. FAIRCHILD. Yes. Yes, that's why I think he had my son indicted. But what kind of deal was made with George Phillips, I don't know.

The VICE CHAIRMAN. What did you say to Judge Nixon when you met with him that day?

Mr. FAIRCHILD. I told him they were picking on my son, just because his dad had money, and I thought Bud Holmes was trying to blackmail me and I thought Carroll Ingram was in on the deal, and I told Judge Nixon if Bud would go ahead and prosecute Bob Royals, they never would hear a damn word out of me, I wouldn't say nothing. But I just didn't appreciate it a bit that they were picking on him and not Bob Royals, they was running the airport together, 50-50 partners.

The VICE CHAIRMAN. At this point, you really didn't care what was done with your son, you didn't care if your—

Mr. FAIRCHILD. Pardon?

The VICE CHAIRMAN. You didn't care if your son was prosecuted or not, you simply thought that they were picking on you somehow?

Mr. FAIRCHILD. Well, that was my way of getting over to Judge Nixon that I was concerned about the way they was doing my son. Of course, I was concerned about him, but I was concerned because they were picking on him and not on Bob Royals, and I just believe then and I believe now, because my son's dad had money.

The VICE CHAIRMAN. Was the nature of your discussion with Judge Nixon, did it have anything to do with trying to affect the way your son's case was handled?

Mr. FAIRCHILD. Absolutely not. I knew he was a Federal judge and I had better judgment than to try to influence him, you know, ask him specifically to go see if he couldn't do something about it. I figured what I told him, I figured what had happened is what did happen, you see.

The VICE CHAIRMAN. When the phone call came from Judge Nixon or Mr. Holmes, you talked to both of them on the telephone.

Mr. FAIRCHILD. Yes.

The VICE CHAIRMAN. What did you understand was said in that phone conversation?

Mr. FAIRCHILD. What was said?

The VICE CHAIRMAN. Yes.

Mr. FAIRCHILD. Well, Judge Nixon said, "You know that man we was talking about this evening?" And I said yes—

The VICE CHAIRMAN. He said what?

Mr. FAIRCHILD. He said—Judge Nixon said, "You know that man we was talking about this evening?" I said yes. He said, "I'm at his house, everything's going to be taken care of to your satisfaction." I says, "Thank you, Judge." And then Bud Holmes got on the phone and he said, "Wiley, when this man asks me to do something, I don't ask no questions, I go ahead and do it." He didn't say he was going to pass it to the files or nothing, but them words I'll remember as long as I live, because I was real proud that something finally was going to get done.

The VICE CHAIRMAN. Meaning what?

Mr. FAIRCHILD. Well, Bud Holmes and Bill Porter done promised that, you know, everything was going to be all right.

The VICE CHAIRMAN. Thank you.

The CHAIRMAN. Mr. Kohl.

Senator KOHL. Just a couple of questions, Mr. Fairchild.

With whom did you review your previous testimony, and with whom did you discuss what you might be saying today about one thing and another?

Mr. FAIRCHILD. I didn't understand the question.

Senator KOHL. I said with whom did you review your testimony prior to the testimony you were getting prepared for today, thinking about it, you know, thinking about how you might approach today's proceedings, with whom did you review your testimony, your prior testimony, and did you discuss with anybody how you might handle today's proceedings?

Mr. FAIRCHILD. Wallace Gunn.

Senator KOHL. OK.

The CHAIRMAN. Who is that?

Mr. FAIRCHILD. He's in the audience there.

Senator KOHL. He's in the audience?

Mr. FAIRCHILD. Yes.

Senator KOHL. OK.

The CHAIRMAN. Who is he? Is he one of your lawyers?

Mr. FAIRCHILD. Yes.

Senator KOHL. All right. Mr. Fairchild, you had said you had had six drinks the night of the telephone call. I couldn't have six drinks and remember too much, but I don't drink very much. But six drinks is quite a few drinks to have and still say I remember exactly what happened with respect to any particular event. But you feel pretty confident, you remember exactly, after six drinks?

Mr. FAIRCHILD. Yes, I remember it. I remember it, because it was important to me, and that's six jiggers, that's not turning the bottle up and glug, glug, glug, it's just six jiggers. I've got a little old brown bottle, about that high, I go home, I fill that up and I drink that and I eat supper and I go to bed. I'll grant you, if you're not used to it, that would—you couldn't remember, a lot of people couldn't remember nothing. [Laughter.]

Senator KOHL. OK.

The CHAIRMAN. When did you start this regime? How long have you been doing that?

Mr. FAIRCHILD. Oh, I got the little bottle I measure it in about 15 years ago.

The CHAIRMAN. The bottle is specially made to hold the right amount?

Mr. FAIRCHILD. Yeah, six—

Senator KOHL. What kind of liquor is it, Mr. Fairchild?

Mr. FAIRCHILD. VO.

Senator KOHL. VO?

Mr. FAIRCHILD. Yeah.

Senator KOHL. OK. One other question: Without wanting to veer off on a tangent, but I'd like to ask you about your own conviction. You pleaded guilty after paying Judge Nixon an illegal bribe, an illegal gratuity, but you've also said that Judge Nixon paid a fair

price and that you even made a profit off the deal. So, why did you plead guilty?

Mr. FAIRCHILD. Because I had three lawyers and they told me I was guilty as hell.

Senator KOHL. So, you did not so much what you thought was right or proper or fair or honest, you did what the lawyers told you to do?

Mr. FAIRCHILD. That's right. In retrospect, I can see now, they didn't want—I done paid them about \$100,000 and they didn't want to try it, they done had my money and they didn't want no trial to go through.

Senator KOHL. These were your lawyers?

Mr. FAIRCHILD. Yes, they were my lawyers.

Senator KOHL. Are you suggesting that they weren't handling your case in your own best interest, rather with respect to how much money they had already made off you?

Mr. FAIRCHILD. I'm fixing to file a lawsuit for my practice against them, yes.

Senator KOHL. You're thinking about it, did you say, are you?

Mr. FAIRCHILD. No, I'm preparing it, I'm going to do it in the next 60 days.

Senator KOHL. You are?

Mr. FAIRCHILD. Yes.

Senator KOHL. Thank you, Mr. Fowler.

The CHAIRMAN. Mr. Chafee?

Senator CHAFEE. Mr. Fairchild, there has been some discussion here of the oil deal Judge Nixon was in, whether the price was fair. You indicated that you could have gotten more, maybe the price was fair. Let me ask you a couple of questions. Have you ever previously had non-family members in on your oil deals?

Mr. FAIRCHILD. Maybe a time or two. I'm sure I have, but I can't recall.

Senator CHAFEE. Did you ever have a non-family member in on an oil deal where you lent the non-family member the money to get into the deal? In other words, was this a rather unique arrangement, not only to have somebody in on the deal, but to lend them the money to get into it?

Mr. FAIRCHILD. Well, it was a unique deal, but I never had been approached, you know, in another deal like this, but I put other people—not in oil deals, but in other business deals, that was non-family.

Senator CHAFEE. And in other deals, you had non-family members in?

Mr. FAIRCHILD. Yes.

Senator CHAFEE. I'm talking about oil or gas deals.

Mr. FAIRCHILD. I don't recall.

Senator CHAFEE. Specifically, have you ever lent somebody money to buy their share of the oil and gas deal? You not only have let them, but you've lent them your money, have you done that or haven't you?

Mr. FAIRCHILD. If I have, I can't think of it, but this amount of money that was involved, it was just, you know, it never crossed my mind that—it was insignificant, I just didn't think nothing about it.

Senator CHAFEE. Let me ask you again about Drew. You said Drew had been in difficulty before, trouble as a youngster. Is that true?

Mr. FAIRCHILD. Well, yeah, he'd been in difficulty, but I don't remember the nature of it, but some frivolous things that—

Senator CHAFEE. Had he ever been in trouble with the law?

Mr. FAIRCHILD. Yeah. Yeah.

Senator CHAFEE. Had he ever been convicted of misdemeanors, say, or a felony?

Mr. FAIRCHILD. I don't know. If he has, I don't remember it. He's told me about things he's been into, that he called me and wanted my lawyer to go down to Florida and get him out of something. I don't remember what it was now.

Senator CHAFEE. Did you rate this drug business as more serious, far more serious, or equal seriousness of previous—

Mr. FAIRCHILD. Oh, it was far more serious.

Senator CHAFEE. Now, you've testified that you told Drew he had to sell everything to pay the bills, but that check to Bill Porter was from you, both those checks, so I'm not sure what you were talking about, that Drew had to sell to—

Mr. FAIRCHILD. Drew and Bob Royals was in some oil business, too, and Bob had to sell what oil business he had. Both of them had to sell all they had.

Senator CHAFEE. Why?

Mr. FAIRCHILD. Huh?

Senator CHAFEE. Why? Why did they have to sell?

Mr. FAIRCHILD. To pay me, I paid Royals [*sic*, Porter] the \$7,500 right away, but with the understanding that they had to sell everything—

Senator CHAFEE. That they pay you back?

Mr. FAIRCHILD. Yes.

Senator CHAFEE. I see. And the \$2,500, likewise, or the \$2,600?

Mr. FAIRCHILD. Well, I don't think they could come up with enough to pay it all. I understand Drew is going to be here and you can ask him about that.

Senator CHAFEE. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Heflin.

Senator HEFLIN. In answer to Senator Danforth's question pertaining to your son's case and the blackmail, you in effect said that, when you discussed blackmail, that you were discussing your son's case, the equivalent of it. In other words, there was nothing other than your son's case that could have been involved in an attempt to blackmail you, is that your testimony?

Mr. FAIRCHILD. Well, there was nothing else but Drew's case. Of course, I just thought that it was blackmail and I didn't ask the judge to do something about it, I just told him that Bud wasn't treating me right and, if he was, he would go ahead and prosecute Bob Royals.

Senator HEFLIN. All right. So, was there any way that you could discuss the blackmail without mentioning your son's case?

Mr. FAIRCHILD. I don't see how I could have and got the point over.

Senator HEFLIN. All right, sir. Now, you have relayed that you talked to Judge Nixon about the blackmail and about Bobby Royals

not being prosecuted. Was anything else, any other factual matter other than blackmail against you and Bobby Royals that you discussed with him?

Mr. FAIRCHILD. No.

Senator HEFLIN. All right, sir. Now, the phone call that you received from Judge Nixon, you have recited that he said, "Everything is going to be taken care of to your satisfaction," and you then said that, when Bud Holmes got on the phone, he said, "What this man asked me, it's done." Is that what you have testified to?

Mr. FAIRCHILD. Bud Holmes told me, he said, "Wiley, when this man asks me to do something, I don't ask no questions, I go ahead and do it."

Senator HEFLIN. All right. So, when he said, "Everything is going to be taken care of to your satisfaction," did he mention to you that the bribery attempt would cease?

Mr. FAIRCHILD. No, he didn't mention that, but I just assumed that everything would be taken care of.

Senator HEFLIN. Did he mention to you that, at that time, that he would see that the blackmailers were prosecuted?

Mr. FAIRCHILD. No, we get into—I don't remember Judge Nixon, when he was in the office, I don't—he probably said a few words, of course, I was—

Senator HEFLIN. I'm talking about the telephone call, when he told you, he said, "You know that man that you mentioned to me earlier"—

Mr. FAIRCHILD. No, there was no blackmail mentioned in that.

Senator HEFLIN. There was no blackmail mentioned in it?

Mr. FAIRCHILD. No.

Senator HEFLIN. Was anything said at that particular time relative to the fact that, "We'll see that Bobby Royals is prosecuted"?

Mr. FAIRCHILD. No, he didn't mention Bob Royals.

Senator HEFLIN. None of the things that you had mentioned to Judge Nixon was mentioned by him in his telephone call to you?

Mr. FAIRCHILD. That's right.

Senator HEFLIN. He said, "Everything will be taken care of to your satisfaction"?

Mr. FAIRCHILD. Yes.

Senator HEFLIN. You had previously, before that, contacted the FBI about blackmail, is that correct?

Mr. FAIRCHILD. Yes.

Senator HEFLIN. You had talked to Judge Nixon about blackmail. He's a Federal judge. Were you at that time seeking to have the blackmailers prosecuted?

Mr. FAIRCHILD. No, I was seeking to get Bud Holmes to do what was right, if he's going to prosecute my son, well, prosecute his partner, he's just as guilty as my son was.

Senator HEFLIN. All right. So, you was asking him to prosecute Bobby Royals, but in the conversation with him, he didn't mention Bobby Royals?

Mr. FAIRCHILD. No.

Senator HEFLIN. Did he mention anything about prosecuting Bobby Royals?

Mr. FAIRCHILD. No.

Senator HEFLIN. Well, to meet your satisfaction, wouldn't it have been required that Bobby Royals be prosecuted?

Mr. FAIRCHILD. Well, yes, to meet my satisfaction, but they just said that and I was just taking it that everything would be taken care of.

Senator HEFLIN. Well, to meet your satisfaction, wouldn't it have been required that the blackmailers be prosecuted?

Mr. FAIRCHILD. Well, or drop the charges against my son.

Senator HEFLIN. Or to drop the charges against your son?

Mr. FAIRCHILD. Yes.

Senator HEFLIN. Well, is that the real reason that you went to see Judge Nixon?

Mr. FAIRCHILD. Well, the real reason I went to him, Bud Holmes wasn't treating my son right and he was prosecuting him and he wasn't prosecuting Bob Royals. Of course, I was mad at both of them, my son and Bob Royals, but at that time, yes, if he had went up there the next morning and indicted Bob Royals, that would have satisfied me, sure.

Senator HEFLIN. I believe that's all.

The CHAIRMAN. Mr. Jeffords?

Senator JEFFORDS. Mr. Fairchild, I have some questions relative to the oil deals as well. I am a little—

The CHAIRMAN. Mr. Jeffords, would you hold for one second—

Senator JEFFORDS. Certainly.

The CHAIRMAN [continuing]. And let me just follow up, and then I will come right back.

Senator JEFFORDS. Certainly.

The CHAIRMAN. Thank you.

Let me just follow up on Senator Heflin. Mr. Fairchild, we've all listened to you for a long time, I know it has been a long process for you to try to remember. But I'm going to try to characterize what you just said and I want you to correct me in very strong terms if this is not your thinking.

What we just heard you tell the Committee was that you had a standard of justice in your head, when you went to see Judge Nixon, and what I heard you just say to Senator Heflin was, you wanted your son and Mr. Royals treated the same. You either wanted them both prosecuted, get on with Royals, or you wanted them both, including Drew, not to be prosecuted.

Mr. FAIRCHILD. That's exactly right.

The CHAIRMAN. And after your meeting with Judge Nixon, according to your testimony, he called you from Holmes' farm and said, "Everything's been taken care of to your satisfaction." Is that correct?

Mr. FAIRCHILD. "Everything is going to be taken care of to your satisfaction," that's the best I remember as what he said.

The CHAIRMAN. And you had no way of knowing, though, what form that satisfaction would take?

Mr. FAIRCHILD. No. No.

The CHAIRMAN. You assumed that either there would be no prosecution of either Royals or Drew or Royals was going to be prosecuted and this thing was going to move, is that correct?

Mr. FAIRCHILD. Yes, it would be done on an equitable basis.

The CHAIRMAN. One way or another.

Mr. FAIRCHILD. Yeah.

The CHAIRMAN. Prosecute them both or let them both go.

Mr. FAIRCHILD. Yes.

The CHAIRMAN. Mr. Jeffords.

Senator MACK. Mr. Chairman, could I follow on with that, if Mr. Jeffords would—

Senator JEFFORDS. That's fine, go ahead.

Senator MACK. I'm sorry.

Senator JEFFORDS. I insist.

Senator MACK. I just want to clarify on the point of—the impression I got from the responses was that your purpose for talking with Judge Nixon was to get either one of two activities accomplished, either both to be tried, prosecuted, or both to be forgotten.

Mr. FAIRCHILD. That's exactly right, and that's why I told Judge Nixon to go ahead and prosecute Royals, indict him like they did my son, and I says you won't hear a damn word out of me, and I told Judge Nixon that.

Senator MACK. And you told Judge Nixon—did you ever say to Judge Nixon that you were interested in getting your son off?

Mr. FAIRCHILD. No. No, I said that, that was the gist of it, if they go ahead and prosecute Bob Royals like my son, you won't never hear a damn word out of me, I don't like the way he's picking on my son.

Senator MACK. Thank you.

The CHAIRMAN. Mr. Jeffords.

Senator JEFFORDS. Thank you, Mr. Chairman.

I want to inquire as to the execution of the deeds to the oil wells. Do you remember as to what time, when those deeds were signed?

Mr. FAIRCHILD. No, I'm sorry, I can't help you on that date.

Senator JEFFORDS. It's my understanding from the testimony that when they were signed, which I believe was sometime in 1981, subsequent to the drug bust anyway—well, after the drug bust, they were backdated about a year.

Mr. FAIRCHILD. That's right.

Senator JEFFORDS. And who ordered them to be backdated and why were they backdated, to the best of your knowledge?

Mr. FAIRCHILD. When I told Carroll Ingram what three wells I was going to put the judge in, I says you go ahead and fix up the papers. Well, he didn't, so I fixed the papers up or I had them do it in my office, and I dated them when it—I knew that one or two of the vells was going to produce when we were fixing the papers up, and I wanted to go ahead and get it to where the operator of the oil well, where he would pay all of the royalties, you see, and that's common in the oil business. It never crossed my mind about backdating them, but Carroll, he said to backdate them to coincide with when the deal was made.

Senator JEFFORDS. So, when you backdated them, that brought more royalties to the judge?

Mr. FAIRCHILD. No, no, no, it didn't change anything.

Senator JEFFORDS. Then, why did you backdate them if it didn't change anything?

Mr. FAIRCHILD. Well, because Carroll Ingram, he was the lawyer and he asked to backdate them.

Senator JEFFORDS. So, Carroll asked you to backdate them?

Mr. FAIRCHILD. Carroll Ingram asked me to—well, he gave them to somebody in my office and told them to backdate them, and that's common in the oil business, that you do that, you see. That's done all the time.

Senator JEFFORDS. Thank you.

The CHAIRMAN. May we conclude with this witness? Can he be dismissed, Mr. Stewart?

Mr. STEWART. I just have two questions.

The CHAIRMAN. All right, I'm going to count them.

FURTHER CROSS EXAMINATION

Mr. STEWART. Mr. Fairchild, you were asked if, really, you weren't trying to get Bob Royals and Drew either both prosecuted or both let free, is that right?

Mr. FAIRCHILD. Yes.

Mr. STEWART. But you didn't get either outcome, did you?

Mr. FAIRCHILD. Huh?

Mr. STEWART. You didn't get either outcome, did you?

Mr. FAIRCHILD. No.

Mr. STEWART. They kept prosecuting Drew and Bud Holmes never prosecuted Bob Royals, did he?

Mr. FAIRCHILD. No.

Mr. STEWART. He didn't prosecute Bob Royals?

Mr. FAIRCHILD. No, he didn't.

Mr. STEWART. Thank you.

Mr. BARON. The House has no questions.

The CHAIRMAN. The House has no more questions?

Mr. BARON. That's correct.

The CHAIRMAN. Mr. Wirth has a couple of questions.

FURTHER EXAMINATION BY THE COMMITTEE

Senator WIRTH. Thank you, Mr. Chairman. I'm sorry I didn't make it a little earlier.

Can you tell me, Mr. Fairchild, was your first discussion with Judge Nixon about investments before the drug bust or after the drug bust?

Mr. FAIRCHILD. Well, my first discussion was with Carroll Ingram and, to answer your question, I'm sorry, I just don't remember.

Senator WIRTH. Would that be important, do you think, if you were sitting where we are, to know?

Mr. FAIRCHILD. Yes.

Senator WIRTH. How would we establish if that discussion occurred before the drug bust or after the drug bust?

Mr. FAIRCHILD. Well, my discussion with Carroll Ingram was before the drug bust.

Senator WIRTH. OK. Let me ask you a second question, if I might. I'm not a lawyer, so I suspect you and I will get along well on this front. I'm not going to ask you any of this lawyer stuff. How much was involved, in your opinion, in this blackmailing? How much money were they talking about blackmailing you?

Mr. FAIRCHILD. Well, you just don't get up for something like this and say a lot of things that you can't prove, but when Bud Holmes was District Attorney, they caught some marijuana right in front

of my office, on Highway 49, and it wasn't long until they flew a plane in there from Miami and brought up I think \$450,000 in fines and they went back, you see. They carried them fellows that was in the drug bust back. So, some things just come up there and it just leads me to believe that there is some blackmail.

Senator WIRTH. Let me tell you, and it is not——

Mr. FAIRCHILD. I'm not insinuating that somebody paid Bud Holmes off, I just don't—I'm not insinuating that somebody paid Bud Holmes off, in addition to the \$450,000 fine they got, but they all went free, and that's kind of unusual.

Senator WIRTH. You're now in the process of suing your lawyers or you say you're going to sue your lawyers?

Mr. FAIRCHILD. I've got an attorney—yes.

Senator WIRTH. Have your lawyers sued you?

Mr. FAIRCHILD. No.

Senator WIRTH. Have you paid your lawyers?

Mr. FAIRCHILD. No, I haven't paid them off.

Senator WIRTH. But the \$100,000 you talked about, that was all paid?

Mr. FAIRCHILD. Yes, that is how much money I'm out, yes.

Senator WIRTH. You've already paid them the \$100,000?

Mr. FAIRCHILD. Yes.

Senator WIRTH. Do you owe them some more money?

Mr. FAIRCHILD. Yes—well, one of them that I paid a lot of money, the last bill he sent me was for \$49,000. I told him there's an error involved, and I had Wallace Gunn to tell him that I'll give you \$25,000 and if you are not satisfied with that, hell, just come to Hattiesburg and get it, so he accepted that \$25,000. [Laughter.]

Senator WIRTH. Let me ask you a final question. In answer to Senator Danforth's questions, you said, "I figured what had happened is what did happen." What did you think actually happened on this thing? What has happened? What went on, when you say you figure what happened did happen?

Mr. FAIRCHILD. What did happen?

Senator WIRTH. What did happen, do you think?

Mr. FAIRCHILD. Well, Drew's case was passed to the file.

Senator WIRTH. Why was Drew's case passed to the file?

Mr. FAIRCHILD. Well, because Judge Nixon told Bud Holmes what I've said.

Senator WIRTH. And why did Judge Nixon do that, say that?

Mr. FAIRCHILD. Well, me and him have become what I think not real close friends, but friends, somebody that I thought wanted to do what's right. I didn't know whether they were going to prosecute Bob Royals, I didn't know whether they were going to drop the case with Drew, but that's what happened, they dropped the case against Drew. They passed it to the file.

Senator WIRTH. Thank you, Mr. Chairman.

The CHAIRMAN. Counsel, may we dismiss this witness?

Mr. BARON. That's fine with the House.

Mr. STEWART. Yes, Mr. Chairman, fine.

The CHAIRMAN. Mr. Fairchild, thank you very much for your testimony. You are dismissed.

[Witness excused.]

The CHAIRMAN. For the sake of the managers and the lawyers, I think we ought to take a 10-minute break here, as quickly as possible, or a 5-minute break, and then we will move on to the next witness.

[Short recess.]

The CHAIRMAN. Mr. Sensenbrenner.

Mr. SENSENBRENNER. Mr. Chairman, the House of Representatives calls Paul Holmes.

The CHAIRMAN. Paul Holmes.

Mr. Holmes, do you swear and affirm that the evidence you shall give in the case now being between the United States and Judge Walter L. Nixon, Jr., shall be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. HOLMES. I do.

The CHAIRMAN. Please be seated.

TESTIMONY OF PAUL H. "BUD" HOLMES

DIRECT EXAMINATION

Mr. SENSENBRENNER. Good afternoon, Mr. Holmes.

Would you please state your full name and address for the record?

Mr. HOLMES. My name is Paul Hardin Holmes, H-o-l-m-e-s. My nickname is Bud, B-u-d. My mailing address is 179 Indian Mound Lane, Slidell, Louisiana.

Mr. SENSENBRENNER. How old are you, sir?

Mr. HOLMES. I am 56. I'll be 57 on October 29th of this year.

Mr. SENSENBRENNER. Could you please tell the committee a little bit about your background?

Mr. HOLMES. I was born in Hattiesburg, Mississippi. I went to the public schools. I attended the University of Southern Mississippi, received a Bachelor of Science degree. I served two years in the United States Army, honorably discharged. I attended the University of Mississippi, received an LLB.

In 1958, I started my own law firm. In 1959, Jim Dukes came into practice with me. In 1980, I was elected district attorney, took over as district attorney for four years. I served in that capacity. In 1985, I believe, I was—

Mr. SENSENBRENNER. OK. Did you ever have any political involvement, Mr. Holmes?

Mr. HOLMES. Yes, sir, in 19—of course, my mother and father were both mayor there of our city—in 1958, I managed Congressman William Connors' campaign.

Mr. SENSENBRENNER. Thank you very much.

When you were in private practice, what kind of a practice did you have, Mr. Holmes?

Mr. HOLMES. Primarily personal injury.

Mr. SENSENBRENNER. And were you in trial practice?

Mr. HOLMES. Yes, of course, down in Hattiesburg, Mississippi, you do it all if you are in practice, from bankruptcy to adoption, land to—

Mr. SENSENBRENNER. Did you practice before both the State and Federal courts?

Mr. HOLMES. Yes, sir, I was admitted to all of them, including the United States Supreme Court.

Mr. SENSENBRENNER. Do you currently practice law?

Mr. HOLMES. No, sir, I'm not.

Mr. SENSENBRENNER. Are you also a businessman?

Mr. HOLMES. Yes, sir.

Mr. SENSENBRENNER. And could you briefly tell us what kind of business you are in?

Mr. HOLMES. Well, at the present time I'm involved with a number of restaurant, nightclubs, we just took a public corporation private, McFadden Ventures, and it's now private. We have like 27 restaurant-nightclubs from Hawaii to different parts of the United States.

Mr. SENSENBRENNER. Thank you very much.

In 1979, did you run for District Attorney of Forrest and Perry Counties, Mississippi?

Mr. HOLMES. Yes, sir, I did.

Mr. SENSENBRENNER. And were you elected?

Mr. HOLMES. I was.

Mr. SENSENBRENNER. Is the office of District Attorney in Mississippi the office of local criminal prosecutor?

Mr. HOLMES. Yes, it is the State prosecutor.

Mr. SENSENBRENNER. And how long did you serve in that office?

Mr. HOLMES. Four years.

Mr. SENSENBRENNER. And what years were they?

Mr. HOLMES. They were 1980 until 1984.

Mr. SENSENBRENNER. Mr. Holmes, were you a witness at Judge Nixon's criminal trial?

Mr. HOLMES. Yes, sir, I was.

Mr. SENSENBRENNER. And at that trial, were you subject to extensive cross-examination by Judge Nixon's attorney?

Mr. HOLMES. I was.

Mr. SENSENBRENNER. Was your testimony at that trial truthful, to the best of your ability?

Mr. HOLMES. Yes, sir.

Mr. SENSENBRENNER. Did you also testify during the House impeachment proceedings last summer?

Mr. HOLMES. I did.

Mr. SENSENBRENNER. And was the testimony during those proceedings truthful, to the best of your ability?

Mr. HOLMES. They were.

Mr. SENSENBRENNER. Are you aware of anything in your trial or House testimony that was inaccurate or mistaken?

Mr. HOLMES. No, sir.

Mr. SENSENBRENNER. Mr. Holmes, your trial and House testimony have been admitted into evidence by the Senate. Your prior testimony is very lengthy, and it is my hope to limit my questions today to the more important points. In the event that I do not ask you a question that was asked during your prior testimony, may the Senate rely on that prior testimony?

Mr. HOLMES. Yes, sir.

Mr. SENSENBRENNER. I would like to ask you some questions about your relationship with Judge Nixon. How long have you known Judge Walter L. Nixon, Jr.?

Mr. HOLMES. Approximately since, I would say, 1959 or 1960.

Mr. SENSENBRENNER. How did you first come to meet him?

Mr. HOLMES. I had a case in Gulfport, Mississippi. Judge Nixon was probably the most prominent trial attorney in the Gulf Coast area, if not in the State, and I was following him in a trial and, while the jury was out, I was very flattered that he came over and talked with me about it, being a just-starting-out attorney, and he talked with me. I told him what the facts in the case were, he asked me what I would take to settle it and I told him a figure and he said, "Well, let me see if I can't give you a hand, go tell them that I'm going to be associated with you." I did and they paid whatever the figure was, and I tried to pay him a normal association fee and he wouldn't take it, he said no, I'm glad to help you, and I've always been very deeply—

Mr. SENSENBRENNER. Would you say that you have been close friends with Judge Nixon for the past 30 years or so?

Mr. HOLMES. Yes, I feel very, very close to him and his family.

Mr. SENSENBRENNER. Have you hunted and fished with him?

Mr. HOLMES. Yes, sir.

Mr. SENSENBRENNER. Have you helped his children over the years?

Mr. HOLMES. Well, I can't say I've financially helped them. One of his sons worked on a part-time basis and did a good job as a pilot down in Mobile, Alabama, but one time, I believe, when his son was coming to the University of Southern Mississippi, I helped him find an apartment, like I would anybody else.

Mr. SENSENBRENNER. Have you stayed in Judge Nixon's home and he in yours?

Mr. HOLMES. Yes, sir.

Mr. SENSENBRENNER. Do you know Wiley Fairchild?

Mr. HOLMES. I do.

Mr. SENSENBRENNER. How do you describe your relationship with Mr. Fairchild?

Mr. HOLMES. I can't say it was particularly close. You know, Mr. Fairchild is one of those individuals who is a self—I can't say exactly a self-made man, highly, highly successful in business, highly successful in oil and gas, I would say more of a complex type of individual, so you really never know where you stand with Mr. Fairchild at any time.

Mr. SENSENBRENNER. Do you know Wiley Fairchild's son, Drew?

Mr. HOLMES. I didn't—well, I knew him but didn't really know him before all this—

Mr. SENSENBRENNER. Do you know Carroll Ingram as well?

Mr. HOLMES. I know Carroll, yes, sir.

Mr. SENSENBRENNER. Did there come a time when Judge Nixon told you he was interested in making an investment with Wiley Fairchild and wanted to know Mr. Fairchild's reputation for oil investments?

Mr. HOLMES. Judge Nixon inquired, wondered if I knew Mr. Fairchild, what was his reputation, and I gave him my opinion.

Mr. SENSENBRENNER. What did you tell him about Mr. Fairchild's reputation as an oil man and the safety of an oil investment with Mr. Fairchild?

Mr. HOLMES. I explained to him, Mr. Fairchild was a highly successful person, he was also very—he had a strong personal ego that, whenever anyone invested with him, that he always liked to make sure they were successful, he had a reputation of never losing an election anywhere. No matter who the governor was, Mr. Fairchild could always go eat at the mansion and things like that. He had a reputation, I believe, of being Senator McGovern's largest campaign contributor. Mr. Fairchild just enjoyed being very close to people in prominent places.

Mr. SENSENBRENNER. Would you say that Mr. Fairchild was very keen in getting involved with influential people?

Mr. HOLMES. I would say that would be an accurate statement, whether it be the preacher at the church or the president of the universities around or whoever, yes, sir, he would always—

Mr. SENSENBRENNER. I would like to ask some questions about the Drew Fairchild drug bust.

Mr. HOLMES. All right.

Mr. SENSENBRENNER. Is there both concurrent State and Federal jurisdiction over drug cases in Mississippi?

Mr. HOLMES. That is correct.

Mr. SENSENBRENNER. And do State and Federal authorities in Mississippi cooperate in investigating and prosecuting drug cases?

Mr. HOLMES. Yes, we always did when I was district attorney and I think that's still the case today.

Mr. SENSENBRENNER. Now, during the summer of 1980, you were the elected District Attorney in Hattiesburg?

Mr. HOLMES. I was, yes.

Mr. SENSENBRENNER. Did you become aware that drug smuggling was taking place at the—

The CHAIRMAN. Mr. Sensenbrenner, why don't we hold it right there—we've got to vote—before you go into the events that we are here for.

Mr. Edwards and Judge Nixon, Mr. Stewart, my Committee is willing to come back after we vote and try to move on possibly a little bit past the hour and see if we can't get in at least all the direct examination this evening.

Mr. SENSENBRENNER. Mr. Chairman, I would estimate that I have somewhere between 40 and 45 minutes of direct examination left of Mr. Holmes.

The CHAIRMAN. Well, we can be back here in about 15 minutes and we will try to do that and conclude today at 5:30 and then have cross tomorrow.

Mr. SENSENBRENNER. Fine.

The CHAIRMAN. We will recess at this time.

[Short recess.]

The CHAIRMAN. We will resume the hearing now. Mr. Sensenbrenner?

Mr. SENSENBRENNER. Yes, thank you.

Mr. Holmes, as you will recall, before the recess I began to ask you some questions about the *Drew Fairchild* case.

Mr. HOLMES. Yes, sir.

Mr. SENSENBRENNER. My next question is did you become aware in 1980 that drug smuggling was taking place at the Hattiesburg airport?

Mr. HOLMES. Yes. I had had a conversation with the Bureau of Narcotics people that they did have the airport under surveillance.

Mr. SENSENBRENNER. OK. Did there come a time when a drug bust was made at the Hattiesburg airport involving a planeload of marijuana?

Mr. HOLMES. Yes, sir. Customs, I believe, followed an airplane into Hattiesburg Municipal Airport, and they made an arrest and took them on to a Federal jail at that time.

Mr. SENSENBRENNER. Initially was this case handled by the United States Attorney's Office in Jackson?

Mr. HOLMES. Yes, sir, it was totally handled by them. It was a Customs case, and we never saw a file or got anything on it.

Mr. SENSENBRENNER. And who was the United States Attorney at the time?

Mr. HOLMES. I want to say that Robert Halberg, I guess, was still the United States Attorney. George Phillips, who was the county attorney from there in Hattiesburg, became United States Attorney sometime in 1980—now, it could have happened after—it was right at that transition period, and I assume that George Phillips did have some involvement.

Mr. SENSENBRENNER. OK. And Mr. Phillips is from your home town?

Mr. HOLMES. Yes. He is a friend of mine.

Mr. SENSENBRENNER. And would you characterize him as a friend of yours?

Mr. HOLMES. Yes, a very good friend. He was county attorney, and I was the district attorney.

Mr. SENSENBRENNER. Was Drew Fairchild implicated in this effort to smuggle a planeload of marijuana?

Mr. HOLMES. Yes, sir. Sometime later—I don't know, I couldn't give the exact dates—but I'd say during the debriefing of the accused, they did implicate Drew Fairchild, a week or two, maybe a month later, but—

Mr. SENSENBRENNER. Do you remember what his role was?

Mr. HOLMES. It is my understanding that Drew was just supposed to not be there, and he was supposed to locate a house or something to that effect where they could store it.

Mr. SENSENBRENNER. Do you know if he was to be paid for his involvement?

Mr. HOLMES. It is my understanding he was to get \$25,000.

Mr. SENSENBRENNER. When all of this took place, did there come a time when attorney Bill Porter, who practiced in Hattiesburg, approached you about the *Drew Fairchild* case?

Mr. HOLMES. Yes. Mr. Porter, who was a very, very good friend of mine—he used to always associate with me in civil cases or criminal cases before I was district attorney—came to see me and told me that he had been notified that Drew was to be implicated in the Federal case and asked me what I would do. What would be my recommendation on what he should do.

Mr. SENSENBRENNER. What was that recommendation?

Mr. HOLMES. My recommendation was to get hold of George Phillips, go up, and if in truth and fact his client was guilty of a crime, go up, cooperate, see if he couldn't pay a fine, and if he was a first

offender and out on the periphery, then perhaps he could get probation.

Mr. SENSENBRENNER. Now, after all that happened, did you later find out whether Drew had entered into an agreement to plead guilty?

Mr. HOLMES. Sometime later, yes, sir.

Mr. SENSENBRENNER. And included in that plea bargain was a promise of cooperation by Drew Fairchild to the Federal authorities with a sentence of a fine and probation, but no jail.

Mr. HOLMES. That is correct. It was a written agreement.

Mr. SENSENBRENNER. Now, after that did there come a time when the local grand jury in Forrest County became interested in the airport drug bust?

Mr. HOLMES. Yes, sir. There were one or two more—an airplane, I know, coming from Tennessee landed, and we couldn't seem to get those people extradited, and another plane had come out there to the airport.

Mr. SENSENBRENNER. Did you try to find out what happened in the case?

Mr. HOLMES. Yes, sir. The grand jury had asked me what had developed in the various cases out there that the Government had taken control of and had made the arrests out there, and I said I'll try to find out what happened in the case.

Mr. SENSENBRENNER. And who did you talk to, and what did you learn?

Mr. HOLMES. I asked Bill Porter whatever happened in the case; I wanted to just make a verbal report to the grand jury, that they made inquiry of it. Bill told me that he did not know, that he had worked out an agreement for Drew's cooperation up there, but he did not know what had really finally disposed of it because he had not seen Drew. And he went on to tell me, as a matter of fact, Drew never even paid him for doing it, but he did know that Drew never went to jail.

Mr. SENSENBRENNER. Did you talk to George Phillips about this?

Mr. HOLMES. Yes, sir. And I called George Phillips to find out from George what happened in it, and during the course of the conversation I laughingly told him—because we all knew each other; we were just all kind of a little group around there—and I jokingly said, you know, "Poor Bill never even got paid." And we laughed about it, and George went on to tell me that Drew had not cooperated with him; he had entered into an agreement where he had promised to cooperate, and that he had not presented the case to the Federal grand jury nor had he presented the case involving the pilot Watkins to the grand jury. And he said it would be fine with him if I presented the case since I already had my grand jury convened.

Mr. SENSENBRENNER. OK. Did you decide to indict Drew Fairchild to help attorney Bill Porter collect his legal fees?

Mr. HOLMES. I guess that was one of the things. I did tell Reid Weingarten during my first interview, when he kept challenging me on why I indicted him, and I did—we were exchanging pretty heated conversation—and I said, "Well, I indicted him because he didn't pay Bill. How about that?"

From then on, it was a downhill squabble from there on.

Mr. SENSENBRENNER. If he did pay Bill, would you have indicted him anyhow?

Mr. HOLMES. Sure, I'd have indicted him. It wouldn't matter to me. The grand jury indicted him. The man was a drug smuggler. Sure, I presented it.

Mr. SENSENBRENNER. Did you take this case with any intention to bestow either favorable treatment or unfavorable treatment upon Drew Fairchild?

Mr. HOLMES. No, sir, I did not intend to bestow any kind of favorable treatment on him. I took the case strictly, strictly because he had committed a felony out there; that's what the evidence indicated, and so had Watkins, and the Bureau of Narcotics presented it, and they asked for who they wanted to indict based on the information that they had.

Mr. SENSENBRENNER. Did you believe that the evidence against Drew Fairchild was strong enough to obtain a guilty verdict at the time you took the case to the grand jury?

Mr. HOLMES. Yes, sir, because he had already given a statement in Jackson that he totally confessed to it.

Mr. SENSENBRENNER. So in August 1981, the Forrest County grand jury indicted both Drew Fairchild and Mr. Watkins on drug conspiracy charges; is that correct?

Mr. HOLMES. That's correct, yes.

Mr. SENSENBRENNER. Did Drew Fairchild initially plead not guilty to the State charges?

Mr. HOLMES. That's correct. That was his plea.

Mr. SENSENBRENNER. And then in January 1982, you reached a plea agreement with Drew Fairchild; is that correct?

Mr. HOLMES. Actually, I believe it was in December, I believe, actually. It was around Christmas time, as I recall it.

Mr. SENSENBRENNER. Could you please tell the Committee what the terms of that plea agreement were?

Mr. HOLMES. The background on it was that we'd gotten a call from the State of Texas, Dallas, that they had a person out there by the name of Robert Watkins, that we had a warrant out for, and that Watkins was denying ever having been in Hattiesburg, Mississippi; that under the Texas manner in which they treated this type case, they were going to release the man unless we could have someone to make positive identification on him. The time was running short, as I recall, and in order to get someone to positively identify him, I called Bill Porter and told Bill that we had arrested Watkins, Watkins was going to testify against his client, but that if he wanted to come in and make a deal and cooperate, I'd be willing to do the same thing the Federal Government had offered him if he would come in and do the same thing for us.

He called his client, and he said his client would be willing to cooperate—

Mr. SENSENBRENNER. What was "the same thing"?

Mr. HOLMES. Which was probation, maximum fine and 5 years and a felony—

Mr. SENSENBRENNER. Any jail time?

Mr. HOLMES. Yes, sir.

Mr. SENSENBRENNER. Was there any jail time?

Mr. HOLMES. Five-year probation.

Mr. SENSENBRENNER. Yes, but was there any jail time?

Mr. HOLMES. Yes, sir—no, sir, not any actual incarceration. To be frank, the Government had already agreed to this, and for me to have gone hardship would have looked like I was—

Mr. SENSENBRENNER. Was this agreement binding upon the court?

Mr. HOLMES. No, sir. The court had a right to totally disregard it. The only thing the district attorney could do was recommend.

Mr. SENSENBRENNER. So the court was free to sentence Drew Fairchild up to the maximum penalty, which was 5 years in prison.

Mr. HOLMES. That's correct.

Mr. SENSENBRENNER. Was this a written plea agreement?

Mr. HOLMES. No, sir. We never had a written plea agreement in State court.

Mr. SENSENBRENNER. After Drew Fairchild pled guilty, was his sentencing postponed several times during 1982?

Mr. HOLMES. Yes, sir—

Mr. SENSENBRENNER. Do you recall why?

Mr. HOLMES. Yes, sir. Mr. Watkins was released out in the State of Texas on an appearance bond or a fugitive bond to appear in the Forrest County Circuit Court, and when he didn't come in—he had jumped bond—I told my staff that any time we made an agreement where someone was going to testify, we were not going to sentence them until after they testified. I had made a mistake earlier, and it got thrown up in my face at the trial.

Mr. SENSENBRENNER. Could you please tell the Committee what "passing a case to the files" means in Mississippi practice?

Mr. HOLMES. It literally means you take it from the active docket and you put it over on the inactive docket.

Mr. SENSENBRENNER. When a case is passed to the files, the defendant suffers no penalty at all; is that correct?

Mr. HOLMES. If it is passed to the file and never revived, then it would just be a dormant case until someone revived it.

Mr. SENSENBRENNER. OK. That means no jail, no fine, no probation—

Mr. HOLMES. It is held in limbo until someone revises it.

Mr. SENSENBRENNER. To your knowledge, up until this particular case, the *Drew Fairchild* case, had there ever been a case where a defendant had pled guilty to a crime and then the case was passed to the files?

Mr. HOLMES. To my knowledge, no, sir.

Mr. SENSENBRENNER. Now, in December 1982, was Drew Fairchild's case passed to the files?

Mr. HOLMES. Whatever the date was; I don't—yes, if that's the date on it.

Mr. SENSENBRENNER. And this was done by a motion of the district attorney's office and an order of the court.

Mr. HOLMES. That's right, that's correct.

Mr. SENSENBRENNER. Now would you turn, please to exhibit 19 in the binder of exhibits? This is the order passing the case to the files.

Mr. HOLMES. All right, sir.

Mr. SENSENBRENNER. Who prepared this document?

Mr. HOLMES. Actually, my assistant district attorney at that time, Glen White, prepared it.

Mr. SENSENBRENNER. Did you instruct him to do this?

Mr. HOLMES. I did.

Mr. SENSENBRENNER. Was it your decision to pass the case to the files?

Mr. HOLMES. One hundred percent.

Mr. SENSENBRENNER. When the case was pending, before it was passed to the files, did Judge Nixon ever come to speak to you about the *Drew Fairchild* case?

Mr. HOLMES. We talked on the way out to the farm one day. That was like in May of—or, April 1982—I don't remember the exact date.

Mr. SENSENBRENNER. Recognizing that these events took place over seven years ago, could you please tell us, Mr. Holmes, to the best of your recollection today, how you came to meet with Judge Nixon and what occurred?

Mr. HOLMES. Yes, sir. Judge Nixon had come by my office—

Mr. SENSENBRENNER. If I may interrupt, this was—

Mr. HOLMES. District attorney's office.

Mr. SENSENBRENNER [continuing]. Your office as district attorney in Hattiesburg?

Mr. HOLMES. Yes, sir. We had been turkey hunting some time previous to that, and he had to go on to another town to sit, and he asked me if I would bring his kill, which was a couple turkeys, down to my house and put them in my deep freeze until he could pick them up. So he said he wanted to pick up his turkeys. There were some people there in the office, and we had been there—we had had a couple of drinks, sitting around and socializing. And we drove out to the farm, and on the way out to the farm, Judge Nixon said that he had been by or he had talked to Wiley—I assume that day, but that might be incorrect—and that Wiley had asked him to put in a good word for his boy.

And Judge Nixon was very, very emphatic; he said, "I'm not asking you to do anything; I don't want you to do anything. You have never asked me to do anything against my oath of office. I am not asking you to do anything against your oath of office. Wiley asked me to put in a good word."

And I was kind of—you know, I guess kind of cocky or whatever—and I said, "Well, my goodness, what does the man want—an apology?" I mean, you know, he's not going to jail; he's already going to get probation. As soon as he testifies against Watkins, the sentence is going to be imposed, and that's going to be it.

But the judge was very emphatic he wasn't asking me to do anything.

Mr. SENSENBRENNER. Would you please look at House Exhibit No. 21 in the black binder?

Could you please describe to the Committee what exhibit 21 is?

Mr. HOLMES. Yes, sir.

Mr. SENSENBRENNER. What is it?

Mr. HOLMES. That was a log that my secretary kept—I didn't know that she was keeping one, but she did keep a log that day—that shows on Thursday, May 13, that Carroll Ingram and Judge Nixon came by the office.

Mr. SENSENBRENNER. Is it your recollection that Carroll Ingram accompanied Judge Nixon to the office during this transaction you described?

Mr. HOLMES. Yes, sir. As I recall, Carroll came by there with Judge Nixon—

Mr. SENSENBRENNER. Do you know if he went out to the farm with you and Judge Nixon?

Mr. HOLMES. No, sir, he did not. Just Judge Nixon and I were in the car.

Mr. SENSENBRENNER. Did you drive in separate cars or the same car out to the farm?

Mr. HOLMES. No, sir; we went out in my car.

Mr. SENSENBRENNER. Who drove?

Mr. HOLMES. I did.

Mr. SENSENBRENNER. And where was Judge Nixon?

Mr. HOLMES. He was sitting in the passenger seat, right front.

Mr. SENSENBRENNER. Did Judge Nixon ever discuss during the drive out to the farm his oil and gas investments with Wiley Fairchild?

Mr. HOLMES. It seemed to me like he said he had talked to Wiley, and that he was thinking about doing some more investments with him, or he was happy with them, or something to that effect. There wasn't any—

Mr. SENSENBRENNER. Did he indicate if he was pleased with them?

Mr. HOLMES. Yes, sir, I think he told me that they were working out fine—and I could have inquired from him, did the thing work out, or something, the investments.

Mr. SENSENBRENNER. OK. Did he indicate that he hoped for more investments with Mr. Fairchild?

Mr. HOLMES. I think he told me that he was considering doing some more, that they were discussing them, or he had discussed some.

Mr. SENSENBRENNER. Would you describe for the Committee what Judge Nixon then said in the car as you were going to the farm?

Mr. HOLMES. Well, that was when he—are you alluding to the fact that he said that, "Wiley asked me to put in a good word for his boy"? Is that what you are alluding to?

Mr. SENSENBRENNER. I'm not alluding to anything—

Mr. HOLMES. OK. I testified to that earlier—

Mr. SENSENBRENNER [continuing]. But did Judge Nixon say that?

Mr. HOLMES. I testified to that earlier. I'll be glad to re-testify to it.

Mr. SENSENBRENNER. Yes. Did Judge Nixon say that?

Mr. HOLMES. Judge Nixon told me, he said, "I'm not asking you to do anything, but Wiley asked me if he and I weren't good friends, and I told him we were, and he said, 'Well, would you mind putting in a good word for my boy?'" And that's when he said, "I'm not asking you to do anything; I don't want you to do anything. You have never asked me to do anything, against my oath of office, nor have I ever asked you to do anything against yours. But he did ask me to put in a good word for him."

I said, "Are you talking about Drew?"

And he said, "I don't know. I don't"—and he didn't want to go into the facts, and we didn't—

Mr. SENSENBRENNER. What was your reaction to Judge Nixon's statement about—

Mr. STEWART. Mr. Chairman, I don't know if he was trying to finish his answer.

The CHAIRMAN. Have you finished your answer, Mr. Holmes?

Mr. HOLMES. OK. My answer on the thing was that Judge Nixon said that, "Wiley Fairchild asked me to put in a good word for his boy."

Mr. SENSENBRENNER. And what was your reaction to that statement?

Mr. HOLMES. And I said, "Are you talking about Drew?"

And as I recall, the judge did not want to go necessarily into the facts, but I talked about it, and I said, "I don't know what you're talking about. What does he want—an apology? Is that what Wiley wants? Does he want the State to apologize to him for indicting him?"

Mr. SENSENBRENNER. Why did you say that?

Mr. HOLMES. Because I thought he had gotten—any time somebody can go in who is accused of a felony, and they can work out a plea bargain where there is no jail time imposed, I think you're being very lenient with the person.

Mr. SENSENBRENNER. Did you tell Judge Nixon that Drew Fairchild was getting probation and a fine and wasn't going to jail?

Mr. HOLMES. I told him that he wasn't going to jail, and the judge responded, he said, "Does Wiley know that?"

And I said, "Well, I don't know; I've never talked to him about it."

Mr. SENSENBRENNER. Now, after Judge Nixon told you that Wiley had asked him to put in a good word with you for Drew, what did you tell Judge Nixon?

Mr. HOLMES. I said, "Well, if he wants to, hell, I'll just pass it to the file."

Mr. SENSENBRENNER. OK. Why did you tell Judge Nixon that you would pass the *Drew Fairchild* case to the files?

Mr. HOLMES. I guess I was just, you know, being a bigshot and trying to throw my weight around and being braggadocious, you know.

Mr. SENSENBRENNER. Would you say that you wanted to do the judge a favor?

Mr. HOLMES. Well, I guess I was just—the old saying, I guess I done come rich and goodlooking, and I just made that statement—the judge didn't ask me to; I just said, "Hell, I'll pass it to the file." I had served four years and, you know, wasn't running for reelection, and I guess I was a little flamboyant with the way I handled the office.

Mr. SENSENBRENNER. Do you remember what the judge said in response?

Mr. HOLMES. He asked me, he said, "Well, I'm not asking you to do anything."

Mr. SENSENBRENNER. When you told Judge Nixon that you would pass the case to the files, was that better treatment for Drew Fair-

child than what had previously been arranged under the plea bargaining agreement?

Mr. HOLMES. Well, yes, sir. If I passed the file and it never was resurrected, it would be tantamount to a dismissal.

Mr. SENSENBRENNER. You told us during the House proceeding that you were willing to treat Drew Fairchild even better under a plea agreement to make Judge Nixon look like a hero; was that a correct statement?

Mr. STEWART. Objection. He is impeaching his own witness.

Mr. SENSENBRENNER. Did Judge Nixon express—

Mr. STEWART. And these are leading questions. Couldn't he just ask the question?

Mr. SENSENBRENNER. Did Judge Nixon express any displeasure when you told him you would pass the case to the file?

Mr. HOLMES. No, there never was any displeasure. Judge Nixon, like I told you all, did not ask me to do it. I took it on myself. I wanted to make Judge Nixon look like a hero. I guess I'd have done the same thing if any of these honorable gentlemen here had asked me, if they had a personal interest or something in a case.

Mr. SENSENBRENNER. Did Judge Nixon in that conversation say that Wiley Fairchild was complaining that you were blackmailing him?

Mr. HOLMES. No, sir.

Mr. SENSENBRENNER. Did Judge Nixon use the word in this conversation, "blackmail" or "extortion" or anything like that?

Mr. HOLMES. No, sir. If Judge Nixon had told me that, I would have immediately empaneled a grand jury and demanded an investigation. As my previous actions have shown, any time somebody would make a statement of impropriety, I immediately called them before the grand jury, and that's what I would have done if Judge Nixon had said that to me.

Mr. SENSENBRENNER. Did Judge Nixon say that Wiley Fairchild was upset about unequal justice, that another man should be prosecuted?

Mr. HOLMES. No, sir. I never heard about that until after all the hearings and testimony and grand juries.

Mr. SENSENBRENNER. What would you have done if someone told you that another man had participated in the drug smuggling?

Mr. HOLMES. I'd have indicted him. And I asked the Bureau of Narcotics later why we did not indict Bob Royals, and they told me that Drew had given them sworn statements, or they had statements from Drew, where he always said that Bob Royals was not involved in the case; and that was the reason they did not ask for indictment on him.

Mr. SENSENBRENNER. Would you please tell the committee what occurred after you and Judge Nixon arrived at the farm?

Mr. HOLMES. We got out there, and I invited him to come in and have another drink, and we joked about that unless I had some Royal Salute, which happened to be the type Scotch that the late Senator Eastland would always drink—he said if I had some Royal Salute, he'd come in and have a drink. And I just happened to have a bottle that someone had given me for Christmas earlier, and I said, "Well, now, Judge, don't let your mouth overload you," or whatever. So we went in and had a drink.

Mr. SENSENBRENNER. So, did Judge Nixon have any drinks with you at the DA's office before you left for the farm?

Mr. HOLMES. As I recall, he had one—maybe more, but one.

Mr. SENSENBRENNER. And how many drinks did he have at the farm?

Mr. HOLMES. One, possibly two. I don't know; I didn't keep count of them.

Mr. SENSENBRENNER. And after you had a drink, did someone, either you or Judge Nixon, place a telephone call to Wiley Fairchild?

Mr. HOLMES. Yes, sir. The question came up, do you mind if I tell Wiley that his boy wasn't going to jail. Or, I could have said let's call Wiley or tell Wiley, but anyway, regardless how we came to it, a phone call was made from my farm to Mr. Fairchild, and Judge Nixon's statement was, "The man that we were talking about, I'm at his farm. I have good news. Your son isn't going to jail."

Mr. SENSENBRENNER. Did Judge Nixon ever suggest that Wiley Fairchild be called?

Mr. HOLMES. My memory on the thing was the question said, "Do you mind if I tell him?" And I could have been the one who said, "Let's call him," or "I'll call him."

Mr. SENSENBRENNER. Do you remember who talked to Wiley Fairchild first, you or the judge?

Mr. HOLMES. My recollection is that he talked to him first, and I got on the phone and told him I hoped there wasn't any hard feelings.

Mr. SENSENBRENNER. To the best of your recollection, what did Judge Nixon say to Wiley Fairchild in that phone call?

Mr. HOLMES. That, "Fairchild, do you remember the man that you asked me to say something to? I'm at his farm, and I have good news. Your son isn't going to jail."

Mr. SENSENBRENNER. Did Judge Nixon—

Mr. HOLMES. And he—

Mr. SENSENBRENNER. Go ahead.

Mr. HOLMES [continuing]. Thanked him; told him he enjoyed his relationship and friendship and that he appreciated the opportunity he had given him.

Mr. SENSENBRENNER. Did Judge Nixon say anything about the oil and gas investment?

Mr. HOLMES. I don't remember whether he alluded to them. He did say that he was enjoying his friendship and appreciated knowing him and thanked him for the opportunity that he had given him to work with him.

Mr. SENSENBRENNER. After Judge Nixon made these remarks to Mr. Fairchild, did you talk to him?

Mr. HOLMES. Yes, sir.

Mr. SENSENBRENNER. And what did you tell Wiley Fairchild?

Mr. HOLMES. I told him that—I tried to give Judge Nixon credit for it—and I told him, Mr. Fairchild, that I hoped there wasn't any ill will or any problem in the way that I had indicted his son, but when Judge Nixon asked me to do something, I'm glad to try to do it.

Mr. SENSENBRENNER. After this conversation—

Mr. HOLMES. But let me be very emphatic: Judge Nixon did not solicit me to make those statements.

Mr. SENSENBRENNER. After this conversation, did Judge Nixon seem angered or upset about anything that happened?

Mr. HOLMES. I don't recall it, no, sir.

Mr. SENSENBRENNER. Were you trying to help Judge Nixon in his relationship with Mr. Fairchild?

Mr. HOLMES. Yes—just like I've done a thousand times with preachers, anybody else. I try to give everybody credit. Any time somebody would get a break, I'd always try to give them the credit.

Mr. SENSENBRENNER. Was it your impression that Judge Nixon was trying to ingratiate himself with Mr. Fairchild in that phone call in telling you that Wiley had asked you to put in a good word for Drew?

Mr. HOLMES. Yes, I think he was just letting him know that he asked me to put in a good word, and I did it, and I'm glad to have done it, you know.

Mr. SENSENBRENNER. So in your conversation, you gave Judge Nixon credit for helping Drew?

Mr. HOLMES. Yes. The truth of the matter was the deal had been cut some many months before that, and I assumed that we would have the trial and Watkins would plead guilty, and the thing would go away, and Judge Nixon would look like a hero, and nothing would have been affected.

Mr. SENSENBRENNER. OK. Did Judge Nixon say anything to you or to Mr. Fairchild to the effect that he should not be given credit for helping Drew?

Mr. HOLMES. I don't recall that, no, sir.

Mr. SENSENBRENNER. OK. Although Judge Nixon did not specifically ask you to help him to enhance his relationship with Wiley Fairchild, what was your impression at the time as to why he told you Wiley had asked him to put in a good word for Drew?

Mr. HOLMES. I assumed he was carrying out a request that Mr. Fairchild had asked of him.

Mr. SENSENBRENNER. OK. And the *Drew Fairchild* case was ultimately passed to the files in December 1982?

Mr. HOLMES. Yes, sir. That was seven, eight months later.

Mr. SENSENBRENNER. Had it not been for the Judge's conversation with you and the subsequent telephone call to Wiley Fairchild, would you have passed the case to the files?

Mr. HOLMES. I don't think so. Bill Porter was fussing with me about it and a lot of other things. It seemed like the easy thing to do. Bill was concerned about Judge McKenzie coming on the bench and Judge Weldy leaving, and he had supported Judge Weldy, and he knew that he had a client out there who had pled guilty to something naked. And by passing the thing to the file, that just seemed to answer a lot of different questions. I knew I had made the statement, and it just solved it all.

Mr. SENSENBRENNER. Thank you. Now I would like to ask you to turn to Judge Nixon's exhibit 66, which is in the green book in front of you—the other one, Mr. Holmes. The House exhibits are black, and the judge's exhibits are green.

Mr. HOLMES. All right.

Mr. SENSENBRENNER. Do you recognize Judge Nixon's exhibit 66 as a declaration you signed last year?

Mr. HOLMES. I do.

Mr. SENSENBRENNER. Who prepared that declaration.

Mr. HOLMES. I believe his attorney, I believe.

Mr. SENSENBRENNER. Do you remember which attorney it was?

Mr. HOLMES. I believe it was—I assume it was David Stewart.

Mr. SENSENBRENNER. The affidavit says, and I quote: "I was not influenced in any way by my handling of the Drew Fairchild matter by this brief exchange with Nixon. My office took no action nor failed to take any action with respect to the Drew Fairchild matter because of that brief exchange I had with Nixon." Is that statement true, Mr. Holmes?

Mr. HOLMES. No, sir, that's not accurate.

Mr. SENSENBRENNER. Did you tell Judge Nixon's counsel this was not accurate?

Mr. HOLMES. Yes, sir, I told him. It was prepared, and I didn't edit the thing, and I told him after I read it—I called him on the phone and told him that that's not an accurate statement.

When I first read it, as I recall, I thought they were talking about—the way I first interpreted was that they were talking about the way I had handled the plea bargaining and so forth and so on. I should have been more articulate.

Mr. SENSENBRENNER. And what did they tell you when you indicated the declaration was not completely accurate?

Mr. HOLMES. To be frank, I don't recall their response to it.

Mr. SENSENBRENNER. Did you sign that affidavit in an effort to help Judge Nixon in his post-conviction proceedings?

Mr. HOLMES. Yes, sir, I did. I wanted to help the judge any way I could.

Mr. SENSENBRENNER. Was it your initial feeling at the time you had the conversation with Nixon and then the telephone call with Wiley Fairchild in which you indicated you would pass the case to the files, was it your intention to sweep the case under the rug and to have it simply go away?

Mr. HOLMES. Would you repeat that, please, sir?

Mr. SENSENBRENNER. Was it your initial feeling at the time you had the conversation with Nixon and then the telephone call with Wiley Fairchild in which you indicated you would pass the case to the files, was it your intention to sweep the case under the rug and to have it simply go away?

Mr. HOLMES. To be frank, I don't know exactly what my state of mind was at the time. I thought all the way through that Drew would come in and that we would have Watkins in, and Watkins would probably plead guilty because I had such a strong case on him; then Drew would go ahead and be sentenced, he wouldn't be going to jail, and that would be the end of it.

However, when I did pass the file in December, that was my intention then, yes, sir.

Mr. SENSENBRENNER. Now let me ask you about the time and date of your meeting with Judge Nixon and the telephone call to Mr. Fairchild. What time of day did the telephone call to Mr. Fairchild occur?

Mr. HOLMES. It was—well, it was in April, and it turned dark—I'd say in the 7 o'clock range, 7, 7:30.

Mr. SENSENBRENNER. And on what day did the conversation occur?

Mr. HOLMES. It was on a Friday.

Mr. SENSENBRENNER. I would ask you to look at—what is the exhibit of the log—

Mr. HOLMES. Now, the exhibit in my secretary's log indicates a Thursday, but she explained that as saying she had written it down on the wrong date.

Mr. SENSENBRENNER. OK. How did you conclude that date occurred?

Mr. HOLMES. OK. That night out at "Bonnie and Clyde's"—that was the local night club in Hattiesburg—my girlfriend and I were out there, and my secretary was out there, and they got into a little altercation. It was the night before going to Jackson, Mississippi to attend the wedding of Gary Turner, and Gary Turner got married on the 15th; and Judge Nixon was out there that night with us.

Mr. SENSENBRENNER. I would draw the Committee's attention to House Exhibit No. 22, which is the marriage certificate stating the date of May 15, 1982.

Was this wedding a matter of some significance to you?

Mr. HOLMES. Yes, sir. Mr. Turner worked for us then, and he works for us now, and they were getting married, and I was going up, and it was my understanding that Mrs. Pace was considering going to it; but the next morning, when my wife now called her, then she didn't go to the wedding.

Mr. SENSENBRENNER. OK. Is it fair to say, Mr. Holmes, that although you believe May 14, 1982 is the date, your meeting with Judge Nixon could have taken place on another date?

Mr. HOLMES. Yes, it could have—as I told you all before, that's the way I remember it; however, it could have taken place on another date. He was at my farm on other occasions.

Mr. SENSENBRENNER. Did Judge Nixon regularly drop by to see you in the district attorney's office when you were D.A.?

Mr. HOLMES. Yes, sir. When the Federal court would be going on, a session would be going on, he and his staff would come by. A lot of times down in the jail, they'd come by, different other Federal judges—in other words, other Federal judges would do the same thing. We are all friends.

Mr. SENSENBRENNER. Now, regardless of the specific date, did your meeting with Judge Nixon and the telephone call to Wiley Fairchild take place before or after Drew Fairchild's case was passed to the files?

Mr. HOLMES. Before.

Mr. SENSENBRENNER. What happened in connection with Drew's case after it was passed to the files?

Mr. HOLMES. After Judge McKenzie got on the bench, he was calling the docket, and an issue was made—this was like, oh, a couple of weeks after it happened—a big issue was made of it in the press, and I made a statement to the press and to the television that if we can find Watkins, that as soon as he is arrested and apprehended that I would reinstate it. We did arrest him, apprehend

him, and I did reinstate it—and from the practical point of view, nothing happened to the Drew Fairchild—I mean, it was——

Mr. SENSENBRENNER. And when did your term as district attorney end?

Mr. HOLMES. It ended December 31, 1983.

Mr. SENSENBRENNER. And at the time you left office, even though the *Drew Fairchild* case had been reinstated to the active docket, had Drew Fairchild ever been sentenced?

Mr. HOLMES. No, sir, because I had called up Bill Porter just before he was killed; Bill wanted me to go ahead and sentence him before I left office. And after Bill had gotten killed, I called Carroll Ingram and asked Carroll if we couldn't go ahead and sentence Drew and get the thing over with and talk to Mr. Fairchild, Judge McKenzie and I—I asked Judge McKenzie to go out there, and he didn't know where we were going, but we went out there to Mr. Fairchild's office, explained to him what we were going to do, and Mr. Fairchild said, "Well, since you have an agreement not to sentence him until after he testifies, let's just leave it like it is." So I left office with it still on the docket, waiting to be sentenced.

Mr. SENSENBRENNER. OK. Now, Mr. Holmes, I would like to ask you a few questions about the Federal Government investigation into all of these transactions.

Mr. HOLMES. All right, sir.

Mr. SENSENBRENNER. Did there ever come a time when you learned that there was an investigation into the handling of the Drew Fairchild case?

Mr. HOLMES. Yes, sir.

Mr. SENSENBRENNER. And how did you first learn of this investigation?

Mr. HOLMES. Judge Nixon called me.

Mr. SENSENBRENNER. And about when was that?

Mr. HOLMES. I'd say sometime in April 1984, I believe.

Mr. SENSENBRENNER. What did Judge Nixon tell you in that telephone call?

Mr. HOLMES. He was very, very incensed, mad; said that some investigators—I thought it was something like a judicial performance committee, you know; I did not get the impact of what it was—that people had been by to question him about his involvement in the handling of the *Drew Fairchild* case, and he had told them that under no circumstances did he have anything to do with it, and that he had told them he had never talked to anyone at any time about the handling of the case, and he repeated that two or three times.

Mr. SENSENBRENNER. Did he repeatedly tell you that?

Mr. HOLMES. Yes, sir. He was mad, because as I gathered, they had accused him of being involved in some type of illegal maneuver, which he hadn't been involved in any illegal maneuver. So he was just incensed over it.

Mr. SENSENBRENNER. Mr. Holmes, your knowing Judge Nixon as a close friend, what was he telling you in that conversation?

Mr. STEWART. I object to that. He can describe what he heard and what he understood.

Mr. SENSENBRENNER. Did you know that what Judge Nixon was saying to you on the phone was not true?

Mr. HOLMES. Yes. The impression that I got was that he didn't want the embarrassment of saying that he had had something to do with the handling of a drug smuggler, because he was so very, very violently opposed to any drug-related-type cases.

Mr. SENSENBRENNER. OK. Did Judge Nixon make a press statement to that effect?

Mr. HOLMES. Later on, yes, at the grand jury, he did.

Mr. SENSENBRENNER. Do you recall meeting thereafter with Judge Nixon in his chambers in Biloxi?

Mr. HOLMES. I did. He was still very incensed about anyone accusing him of some impropriety, and he asked me at that point if I knew if the telephone conversation we had had with Wiley was taped. And I said, well, I'll find out, or try to find out.

Mr. SENSENBRENNER. What did you understand Judge Nixon to be saying when he asked you whether or not the phone call had been taped?

Mr. HOLMES. I think it was just a matter of his trying to protect his own image, that he didn't want to be saying he had never talked to anybody at any time, and then someone would have a tape of us talking to Wiley.

Mr. SENSENBRENNER. When did this meeting with Judge Nixon in his chambers take place?

Mr. HOLMES. I would say it would have to be like in May or some time. I was down there on one of Bill Porter's pre-trial—one of his cases I was helping the widow with, Mrs. Porter.

Mr. SENSENBRENNER. This is May 1984?

Mr. HOLMES. It probably, I would say, was in May.

Mr. SENSENBRENNER. Did you talk with Carroll Ingram to find out whether Wiley Fairchild had taped this telephone call?

Mr. HOLMES. Yes, I just went over and asked Carroll. I mean, I wasn't all that concerned. I went and asked Carroll if it had been taped; if it had been taped, I'd say play the darned thing; I didn't care.

Mr. SENSENBRENNER. Did you tell Judge Nixon what Carroll Ingram told you?

Mr. HOLMES. As I recall, I did, that Carroll didn't know anything about any tapes, or he didn't—

Mr. SENSENBRENNER. All right. Were you subpoenaed to appear before the grand jury that was investigating the situation?

Mr. HOLMES. Yes, yes.

Mr. SENSENBRENNER. Before you appeared in the grand jury, did Judge Nixon make a public statement to the effect that he had never been involved in the *Drew Fairchild* case?

Mr. HOLMES. Yes.

Mr. SENSENBRENNER. And your first appearance before the grand jury was about when?

Mr. HOLMES. I want to say it was in like July 1984, I believe.

Mr. SENSENBRENNER. Did you tell the truth in that grand jury testimony?

Mr. HOLMES. Well, I—you know, it was one of those things where you can split hairs. They didn't ask me about the phone call, so I didn't volunteer it. They did ask one of these catch-all phrases, "Is there any other thing you ought to tell the grand jury that you haven't told us?" And of course I didn't volunteer the phone call.

Mr. SENSENBRENNER. Why didn't you tell the grand jury about the phone call?

Mr. HOLMES. Well, quite frankly, I just didn't want to counter or contradict what Judge Nixon had already said in the public statement, and I guess he was just trying to protect his public image.

Mr. SENSENBRENNER. After your first grand jury appearance, did you have another meeting with Judge Nixon at his chambers in Hattiesburg?

Mr. HOLMES. Well, there were two appearances—the first appearance was split, and I don't believe it was during then. Now, I was going back before the grand jury, I guess you'd call it the second time, which would have been my third trip in there. I talked to Carroll Ingram, and Carroll had told me that he had been to Washington, and that he had told them about the telephone call, and that there was no criminal act in a Federal judge talking to a State prosecutor, and that there would be no problem at all if everybody would just come on in and just tell them about the telephone call. So I did go—I called Judge Nixon, told him I wanted to see him. He had a jury out, and we came down and met in his car. And I told him basically about my conversation with Carroll, and he was upset and wanted to know why I had talked to Carroll about it.

Mr. SENSENBRENNER. Now, in the light of your failure to disclose to the grand jury about that telephone call, is it fair to say that you were fairly worried after you found out that the Government knew about the phone call?

Mr. HOLMES. I was worried, yes, I was concerned about it because I knew good and well that if they could have indicted Wiley on what they indicted him on, I realized that they could indict me for saying "Good morning" the wrong way. So I knew then that I was just at their mercy. And Reid Weingarten had already had it out real, real hard, and I knew there was no love between him and me, and so I said, well, I guess this is it for me.

Mr. SENSENBRENNER. Were you called in for additional questioning by the grand jury in February 1985?

Mr. HOLMES. Yes.

Mr. SENSENBRENNER. By this time—meaning your February 1985 appearance before the grand jury—you knew that the Government knew about the phone call and that Wiley Fairchild had pled guilty; is that correct?

Mr. HOLMES. I don't—let's see, February of 1985—I'm trying to think if that's when I went before the—if that was the date of my appearance, yes, sir, I'm sure that's after—

Mr. SENSENBRENNER. OK. Now, at this appearance, did you testify truthfully about the phone call?

Mr. HOLMES. Not totally. I tried to soft-pedal it. I told them about the telephone call, and I told them that I was drinking and that was the reason I didn't tell them about it the first time—but that wasn't the total truth.

Mr. SENSENBRENNER. Were you ultimately indicted by the grand jury?

Mr. HOLMES. Yes, sir, I was.

Mr. SENSENBRENNER. Did you plead guilty prior to trial?

Mr. HOLMES. Yes. After we picked the jury, I plead guilty to a less than a felony contempt of court.

Mr. SENSENBRENNER. As part of that agreement did you agree to cooperate with the Government and to provide truthful testimony?

Mr. HOLMES. Yes, sir, I told them. I just told the whole thing because I knew there had been no crime.

Mr. SENSENBRENNER. And what sentence did you receive as a result of your guilty plea?

Mr. HOLMES. They gave me one year and a \$10,000 fine. I paid the \$10,000 fine, and prior to my entering into an agreement, I was told that under the statute, I could either pay a fine or I could do some time; I couldn't get both.

Mr. SENSENBRENNER. Did you ever serve any time in jail?

Mr. HOLMES. No, sir, no, sir.

Mr. SENSENBRENNER. Now, prior to coming forward and telling the truth to the Government, why had you lied about the phone call and Judge Nixon's involvement in the *Drew Fairchild* case?

Mr. HOLMES. Well, Judge Nixon had made a position, and I just did not want to contradict him.

Mr. SENSENBRENNER. Have you been suspended from the practice of law as a result of your guilty plea?

Mr. HOLMES. Yes, sir. I was disbarred.

Mr. SENSENBRENNER. After you pled guilty, did you go back in to the grand jury and apologize and tell them the truth about the phone call and Judge Nixon's involvement in the *Drew Fairchild* case?

Mr. HOLMES. I did.

Mr. SENSENBRENNER. I have just a few concluding questions, Mr. Holmes.

You have testified that you talked with Judge Nixon about the *Drew Fairchild* case.

Mr. HOLMES. I did.

Mr. SENSENBRENNER. Judge Nixon told you Wiley Fairchild asked him to put in a good word for Drew.

Mr. HOLMES. He did.

Mr. SENSENBRENNER. You told Judge Nixon you would pass Drew's case to the file.

Mr. HOLMES. I did.

Mr. SENSENBRENNER. Judge Nixon talked to Wiley Fairchild on the phone from your farm with you present.

Mr. HOLMES. That's correct.

Mr. SENSENBRENNER. Judge Nixon told Wiley Fairchild that he was out at your farm, that Drew wasn't going to jail and that he appreciated Mr. Fairchild's friendship and the investment opportunity.

Mr. HOLMES. I know he told him he appreciated his friendship and in the investment, yes, sir.

Mr. SENSENBRENNER. You then took the phone and, in Judge Nixon's presence, told Wiley Fairchild that you and the judge were good friends, that any time Judge Nixon ever asks you to do something, you are glad to do that.

Mr. HOLMES. That's correct.

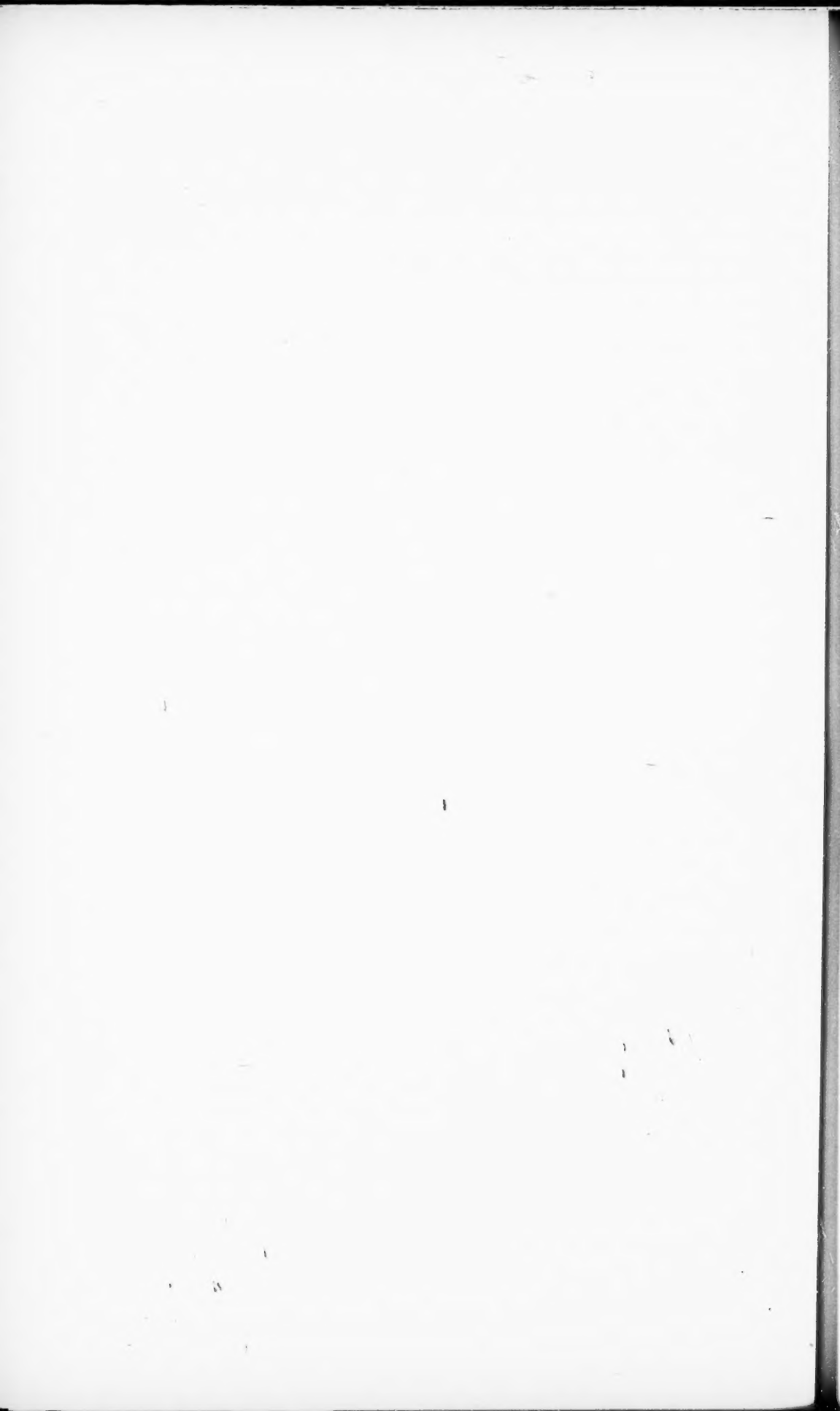
Mr. SENSENBRENNER. I have no further questions.

The CHAIRMAN. Gentlemen, it's been a long day, and I appreciate both the House and Mr. Stewart and Judge Nixon's counsel, your thorough presentations.

We will adjourn until promptly at 9:30 in the morning and begin with the cross examination of Mr. Holmes by Mr. Stewart.

I thank especially the committee. Let's see if we can't start promptly at 9:30 tomorrow with a chance of finishing the House's case tomorrow.

[Whereupon, at 5:37 p.m., the committee was adjourned, to reconvene Friday, September 8, 1989, at 9:30 a.m.]



IMPEACHMENT TRIAL OF JUDGE WALTER L. NIXON, JR.

FRIDAY, SEPTEMBER 8, 1989

U.S. SENATE,
IMPEACHMENT TRIAL COMMITTEE,
Washington, DC.

The committee met, pursuant to notice, at 9:40 a.m., in room SH-216, Hart Senate Office Building, Hon. Wyche Fowler, Jr., chairman of the committee, presiding.

Members present: Senators Fowler (chairman), Danforth (vice chairman), Heflin, Wirth, Reid, Robb, Kohl, Chafee, Jeffords, Mack, and Symms.

House managers present: Representatives Edwards, Cardin, and Sensenbrenner.

Counsel present: David O. Stewart, Peter M. Brody and Michael B. Holleman counsel for Judge Nixon; Alan I. Baron, special counsel; House of Representatives; Peter E. Keith, assistant special counsel, House of Representatives; Daniel Freeman, Colleen Kiko, and Catherine LeRoy, counsel, House Judiciary Committee; Morgan Frankel, Assistant Senate Legal Counsel, and Donald A. Purdy, Jr., counsel for the Senate Impeachment Trial Committee.

Staff present: Anthony L. Harvey, administrator, Senate Impeachment Trial Committee; P. Casey McGannon, staff assistant, Senate Impeachment Trial Committee; Isabel McVeigh, staff assistant, Senate Impeachment Trial Committee.

Katherine Urban, and Dorothy Wadley, staff members, House of Representatives.

The CHAIRMAN. We will resume the hearing in the matter of the impeachment of Judge Walter L. Nixon, Jr. And I believe that it's time for the cross examination of Mr. Holmes by Mr. Stewart.

Mr. STEWART. Thank you, Mr. Chairman.

Good morning, Mr. Holmes.

TESTIMONY OF PAUL H. "BUD" HOLMES (continued)

CROSS EXAMINATION

Mr. HOLMES. Good morning, Mr. Stewart.

Mr. STEWART. Mr. Holmes, I believe you've testified before that, as you've known Judge Nixon, it's always been your impression that he would not do anything to cause any embarrassment to his court or to himself.

Mr. HOLMES. That's very true.

Mr. STEWART. And you've never known him to do anything dishonest?

Mr. HOLMES. To my knowledge, no, sir.

Mr. STEWART. OK. I think you even testified——

Senator DANFORTH. Could you speak very clearly, please, Mr. Holmes?

Mr. HOLMES. Pardon?

Senator DANFORTH. Could you speak very clearly?

Mr. HOLMES. Yes, I'd be glad to. I'm sorry. My answer to that was not to my knowledge, no.

The CHAIRMAN. Bend that microphone until you get right—you got to get right at it there.

Mr. HOLMES. All right, sir. How's that?

The CHAIRMAN. No, that's too close.

Mr. HOLMES. OK. All right.

Mr. STEWART. And I believe it was your testimony that he never wanted to feel obligated to you or to anybody else about anything?

Mr. HOLMES. Yes. He was an excellent judge, a very honorable person, and kept himself very, very aloof from any impropriety or any appearance of impropriety.

Mr. STEWART. Now, I want to ask just a little about your own, really, personality and the way you deal with things. Would it be fair to say that you're kind of a quick-witted fellow; you speak quickly, you think quickly?

Mr. HOLMES. Yes. I let my mouth overload my fanny all the time, yes, sir.

Mr. STEWART. OK. So it's fair to say that you, like a lot of us, sometimes speak before—you feel like afterwards that you should have thought a little longer about it?

Mr. HOLMES. Yes, sir. I bite my tongue a lot of times, yes.

Mr. STEWART. OK. And it's also fair to say that you're a sociable person; you like to go out and see people and have a good time?

Mr. HOLMES. Yes, sir. I would say that's true.

Mr. STEWART. OK. And in your business and socially, you like to stay in touch with people; you talk to them on the phone, you're on the phone most of the time, aren't you?

Mr. HOLMES. Yes, sir.

Mr. STEWART. OK. I want to get right into that conversation with Judge Nixon on that day, try to set the stage a little. Your recollection, I think you said yesterday, was that the phone call happened around 7 o'clock in the evening?

Mr. HOLMES. Yes, somewhere in there. Say dark, a little after dark.

Mr. STEWART. When you say dark, you mean sunset?

Mr. HOLMES. Well, yes, it was.

Mr. STEWART. OK. And Judge Nixon you think came by your office first?

Mr. HOLMES. Yes.

Mr. STEWART. OK. And he was with Carroll Ingram, by your recollection?

Mr. HOLMES. As I recall, yes.

Mr. STEWART. OK. Then you get in the car, and you drive out to your farm?

Mr. HOLMES. Yes, sir.

Mr. STEWART. OK. Now, when Judge Nixon talks to you in the car, as you recall it, he tells you that Wiley's asked him to put in a good word for Drew. That's what you remember?

Mr. HOLMES. That's correct, yes.

Mr. STEWART. OK.

Mr. HOLMES. He prefaced it by saying he wasn't asking me to do anything, didn't want me to do anything.

Mr. STEWART. OK. And he tells you he's not asking you to do——

Mr. HOLMES. Very emphatic on that point.

Mr. STEWART. OK. And your reaction is: What does the man want? An apology?

Mr. HOLMES. Yes, that——

Mr. STEWART. After all, Drew's pled guilty.

Mr. HOLMES. We've already got a deal. I mean, he's already a convicted felon. I mean, the damage is already done to the man. All he had to do was testify. He wasn't going to jail. I mean, what else did he want?

Mr. STEWART. OK. And you tell Judge Nixon that there is a plea agreement with Drew?

Mr. HOLMES. Yes, sir.

Mr. STEWART. OK. And you tell him——

Mr. HOLMES. The judge started to——best I remember, the judge could tell me he didn't want to know anything about it. He was very emphatic. He didn't want to——"I'm not asking you that." I don't know that I told him.

Mr. STEWART. That's what I just wanted to nail down here. You said you offered to tell him about the case, and he said he really didn't care to hear about it.

Mr. HOLMES. He wasn't asking. I might have just kept on blabbing and told him. But he did not ask me the details on it, no.

Mr. STEWART. OK. And you did ultimately take him at his word and not tell him anything more about the case?

Mr. HOLMES. I don't know. Knowing me, I probably told him all about the thing. I don't——

Mr. STEWART. Well, you have no recollection of that, though?

Mr. HOLMES. I don't have any recollection of it. But what I'm saying is that Judge Nixon——

Mr. STEWART. Could you please——

Mr. HOLMES [continuing]. Was very emphatic in telling me that he didn't want to know, he wasn't asking me, he wasn't trying to meddle in the thing. He was just merely repeating what a man asked him to do, and that was it.

Mr. STEWART. OK. And all you remember actually telling him is that there was a plea bargain. You don't remember telling him anything else?

Mr. HOLMES. The only thing I remember telling him was, "My God, you know, what does he want? An apology? He's already got a deal."

Mr. STEWART. That's what you actually recall telling him?

Mr. HOLMES. I remember that very emphatically. And he asked me, "Does Wiley know that?"

Mr. STEWART. OK. About the plea bargain——

Mr. HOLMES. And I told him I don't know because I never talked to Wiley about it. In some way, at that point or at the farm, he said, "Do you mind if I tell Wiley?"

Mr. STEWART. OK. And he wants to tell—as you recall it, he's saying, "Do you mind if I tell Wiley about the plea bargain?"

Mr. HOLMES. That's right, that his boy wasn't going to jail.

Mr. STEWART. OK. Now, this—

Mr. HOLMES. At that point, to be frank, that's the first contact that I remember anybody from Wiley Fairchild ever telling me that Wiley had any interest at all in the case. I thought they were totally estranged, and I had never heard from anyone that I know of directly from Wiley.

Mr. STEWART. Well, it's your recollection, though—let me get back to the car here—that at some point you said, "Shoot, judge, I'm the D.A. I can pass the case to the files if I want?"

Mr. HOLMES. Yes, that's right. I was elected district attorney. I might not have been politically smart. I wasn't running for re-election, and, you know, I had the power to do it.

Mr. STEWART. And as you recall it, Judge Nixon said, "Don't pass the case to the files. I'm not asking you to do anything?"

Mr. HOLMES. I don't remember him saying, "Don't pass it to the files." He said, "I'm not asking you to do anything."

Mr. STEWART. All right. He's not asking you to do anything.

Mr. HOLMES. That's correct.

Mr. STEWART. He's made that clear.

Mr. HOLMES. That's correct.

Mr. STEWART. All right. Then you talk about other things.

Mr. HOLMES. Probably, yes.

Mr. STEWART. OK. What we've just gone through is a 2- or 3-minute conversation?

Mr. HOLMES. At the most, I'd say.

Mr. STEWART. Now, you get out to your farm and have a drink or two.

Mr. HOLMES. Yes.

Mr. STEWART. All right. And then—and I think we've just covered this—Judge Nixon says, you know, "It's okey if I tell Mr. Fairchild about this plea bargain?" That's how you recall it? Or he might have said that in the car.

Mr. HOLMES. He could have said that in the car. We got out there. As I recall it, "Do you mind if we tell Wiley?" or I might have suggested calling him. I don't recall, but the call was made to him.

Mr. STEWART. OK. That's another point I wanted to ask about. When you get out to the farm, you're not sure if it was your idea to call Wiley or if it was his idea?

Mr. HOLMES. No. My recollection was that he made the call, but it could have been my idea to make the call.

Mr. STEWART. And your understanding when the call was being made was that it was being made to tell Wiley about the plea deal?

Mr. HOLMES. That's correct.

Mr. STEWART. OK.

Mr. HOLMES. Well, not about the plea. The boy wasn't going to jail.

Mr. STEWART. Well, under the plea deal.

Mr. HOLMES. Well, yes, that's right.

Mr. STEWART. OK. And what he says to Mr. Fairchild that you hear him say is, that you recall, is that, "Your boy's not going to jail," and you understand that's under the plea agreement. Correct?

Mr. HOLMES. Well, what he basically said was, "Do you remember the man we were talking about that you asked me to say something to? Well, I'm out at his farm." He did not identify me by name. And he said, "I've got some good news for you. Your boy isn't going to jail."

Mr. STEWART. And that was true under the plea agreement?

Mr. HOLMES. That was exactly true.

Mr. STEWART. OK. And then he hands you the phone, and you talk a while.

Mr. HOLMES. I probably asked to let me speak to him.

Mr. STEWART. OK.

Mr. HOLMES. That would be my nature.

Senator REID. Excuse me. I don't speak southern; I don't know what you said.

Mr. HOLMES. Pardon?

Senator REID. I couldn't hear what you said.

Mr. HOLMES. All right, sir. I said I probably asked Judge Nixon to hand me the phone to let me speak to Mr. Fairchild.

Mr. STEWART. OK. And then after you hung up the phone, I think your testimony was yesterday that you and Judge Nixon didn't have any conversation about that phone call?

Mr. HOLMES. I don't recall it, no, sir.

Mr. STEWART. OK. So you have no way of knowing whether Judge Nixon heard what you said to Mr. Fairchild after he hands you the phone?

Mr. HOLMES. I have no idea whether he heard me or not.

Mr. STEWART. OK. So just to go back over this, then, you've told him that there is a plea deal.

Mr. HOLMES. That's correct.

Mr. STEWART. And he's called Wiley Fairchild or you've called—somebody has called him, and Judge Nixon tells him the boy's not going to jail under the plea deal.

Mr. HOLMES. I don't remember mentioning "under the plea deal." He just said that he wasn't going to jail.

Mr. STEWART. All right. And that plea deal was preexisting?

Mr. HOLMES. That plea deal had been cut—was cut back around in December, the latter part of December.

Mr. STEWART. At least months before?

Mr. HOLMES. That's correct. About four months before.

Mr. STEWART. OK.

Mr. HOLMES. This is in April, and the plea deal came about in December. He actually pled, I believe the record would show, in January of that year. But this was some four months after he pled, and he pled guilty based on the strength of our plea bargain.

Mr. STEWART. All right. And so Judge Nixon has asked you—has said, the way you recall it, "Do you mind if I tell Wiley about the plea deal?" He hasn't said, "Do you mind if I tell Wiley the case will be passed to the files?"

Mr. HOLMES. No, sir. I don't remember him saying, "Do you mind if I tell him it's going to be passed to the files?" He just said, "Do you mind if"—no. When Judge Nixon learned that Drew was not going to jail, that the deal had already been cut some four months, he basically wanted to know if it would be all right if he told him.

Mr. STEWART. OK.

Mr. HOLMES. That his boy wasn't going to jail.

Mr. STEWART. Right. So you've got no reason to—and Judge Nixon had—excuse me. Let me start again.

Judge Nixon's got no reason to think, based on your exchange, that anything that you have talked about is changing the way Drew's being treated?

Mr. HOLMES. No, sir. It was—all of that had already been done some four months prior to that.

Mr. STEWART. So he's perfectly reasonable in his own mind to think: I found out there was a plea deal, and that information was passed on to Mr. Fairchild?

Mr. HOLMES. That's correct.

Mr. STEWART. OK. Now, you placed this call in your own recollection in May 1982, but you've said you can't be positive about that; is that right?

Mr. HOLMES. It could have been some other date. That's my best recollection based on the facts as I've enumerated.

Mr. STEWART. OK. And after—if it was then, then we do know that nothing happened in Drew's case in June 1982.

Mr. HOLMES. That's correct.

Mr. STEWART. Or July.

Mr. HOLMES. No, sir. It didn't happen until—

Mr. STEWART. Or August. Not until December.

Mr. HOLMES. December, that's correct. Seven months later.

Mr. STEWART. I wanted to ask one other point that Mr. Sensenbrenner skipped over yesterday when he was questioning you. You do remember—and I think you've testified about this before—that there was an occasion or you remember an occasion where Judge Nixon told you that Wiley Fairchild claimed that you were blackmailing him?

Mr. HOLMES. That was in the chamber after all the investigation started.

Mr. STEWART. And you remember that happening after the investigation started?

Mr. HOLMES. He told me—this was probably some 6 months or so after the investigation. He said he'd learned what the investigation was all about, that Wiley claimed that I was blackmailing him and Drew. And I was shocked to the Nth degree.

Mr. STEWART. OK. So then you had—you did have a blackmail conversation with Judge Nixon. You just remember it happening at a different time from the time of this phone call?

Mr. HOLMES. It did not happen at the time of the phone call. It happened the day that he recommended I hire Michael Fawer at that point.

Mr. STEWART. OK. Now, I believe yesterday you said that if you had heard the blackmail allegation back at the time of the phone call, you would have empaneled the grand jury?

Mr. HOLMES. That's correct.

Mr. STEWART. To investigate that.

Mr. HOLMES. That's correct.

Mr. STEWART. I wanted to ask you about that, Mr. Holmes. Do you think it would have been proper for you as district attorney to empanel a grand jury to investigate charges against you?

Mr. HOLMES. No, sir. I would have called in the peer committee like I'd done before.

Mr. STEWART. All right. Let's back up and start with the *Drew Fairchild* case.

Mr. HOLMES. All right, sir.

Mr. STEWART. The bust is in August 1980. I'll give you that date just to start with.

Mr. HOLMES. OK.

Mr. STEWART. And you advise Bill Porter when he comes by that he ought to take Drew up to Jackson to make a deal with the U.S. Attorney there, George Phillips.

Mr. HOLMES. That's correct.

Mr. STEWART. OK. And—

Mr. HOLMES. Call the U.S. Attorney for him and set up an appointment for them to go up there.

Mr. STEWART. You were extremely close to George Phillips?

Mr. HOLMES. Yes. You know, he's right—he's close to all of us.

Mr. STEWART. OK. And you spoke to him daily on the telephone at that time?

Mr. HOLMES. I would say we talked probably—if it wasn't daily—two or three times a week.

Mr. STEWART. And Mr. Porter was a close friend of yours, too?

Mr. HOLMES. Yes, he was close.

Mr. STEWART. OK. But after Mr. Porter goes up to see George Phillips, you have no recollection of hearing anything about how it turned out or anything about the case until 1981, until the next year?

Mr. HOLMES. I have no independent recollection.

Mr. STEWART. Let me introduce one more character here. Who was Bob Royals? You knew him, didn't you?

Mr. HOLMES. Yes. Bob Royals was a man that worked out at the airport with Drew.

Mr. STEWART. OK. And he had flown as a pilot in your plane, hadn't he?

Mr. HOLMES. I think one time or twice, yes. I knew him.

Mr. STEWART. And you knew that Bill Porter represented Bob Royals some of the time?

Mr. HOLMES. I guess he did.

The CHAIRMAN. What was the answer to that, please?

Mr. HOLMES. I guess he did, yes, sir.

Mr. STEWART. And you knew that Mr. Porter and Mr. Royals were good friends, didn't you?

Mr. HOLMES. Not particularly. I know that Bill Porter represented the airport, you know, where Drew and Bob and all of them worked together out there.

Mr. STEWART. OK.

Mr. HOLMES. And I would assume—I mean, I'm just thinking back in my recollection, it seemed like that Bill did represent Bob,

and I'm just trying to think what it might have been, either a satellite company or something. I think Mr. Fairchild might have backed him in some satellite company because Bill did a lot of work, the best I recall, for Wiley Fairchild.

Mr. STEWART. Now, you learned—you've testified that you learned after the bust in August 1980 that suspicion focused on Bob Royals as well.

Mr. HOLMES. No, sir. The only thing I have is a file that the Government sent me, and there was nothing in the file to indicate that. But the people that I presented to the grand jury was Bureau of Narcotics, and they're the ones who asked for the indictments on the people they had evidence on.

Mr. STEWART. Well, when you testified before the grand jury in July 1984, page 11, you said that at the time the bust happened you had heard it was Drew and a boy named Royals who were out there, and they were the ones that they were going to try to make a case on.

Mr. HOLMES. I might have said that. I don't recall that.

Mr. STEWART. OK.

Mr. HOLMES. If I testified to that, I did. But I do know that I asked the Bureau of Narcotics after my grand jury appearance why they did not ask for an indictment on Bob Royals, and they said that Drew had given them a sworn statement that Bob Royals wasn't involved and they had no evidence; that it wasn't until after Drew came in and cooperated, is my understanding, that they then had enough evidence to go forward on Royals.

Mr. STEWART. Well, you had a cooperation agreement with Drew, didn't you?

Mr. HOLMES. Yes, sir, but he never volunteered anything against Royals.

Mr. STEWART. Never told you that?

Mr. HOLMES. No, sir. Never told the Bureau of Narcotics that did the investigation about it.

Mr. STEWART. Do you remember telling Bob Royals that there was a lot of talk on the street that he was involved in that drug bust?

Mr. HOLMES. I could have. I don't recall it independently.

Mr. STEWART. So your testimony at the grand jury in February, on page 15, is to that effect, that "Royals denied to me violently that there was anything going on, and I said, 'Bob, I just know there's a lot of street talk, you know, going on.'"

Mr. HOLMES. It seemed like I could have told him that. I don't recall the time and place, but—that was what year?

Mr. STEWART. Well, you say it was the day he came in with Bill Porter.

Mr. HOLMES. What day? I mean, what year was it? I don't deny it. I'm just saying I have no—

Mr. STEWART. When you first went in as district attorney. That would have been in 1980.

Mr. HOLMES. Oh, in 1980. That would have been—

Mr. STEWART. The bust is August 1980.

Mr. HOLMES. I want to recall—if I testified to that, then that's what occurred, yes.

Mr. STEWART. OK. Now, in the summer of 1981, you testified yesterday, you started learning about that drug bust out at the airport in order to present it to your own grand jury.

Mr. HOLMES. Yes, if I testified to that.

Mr. STEWART. OK. And then Bill Porter comes by, and you ask him about the case.

Mr. HOLMES. That's correct.

Mr. STEWART. OK. And he complains that Drew Fairchild hasn't paid him.

Mr. HOLMES. That was one of his complaints, yes.

Mr. STEWART. OK. And that made you angry, didn't it?

Mr. HOLMES. No, sir.

Mr. STEWART. It didn't make you angry?

Mr. HOLMES. No.

Mr. STEWART. OK.

Mr. HOLMES. I don't recall it making me angry. I don't know why it should have.

Mr. STEWART. Do you remember being interviewed by the FBI on April 25, 1984, right at the beginning of the investigation?

Mr. HOLMES. I remember being interviewed by them about 15 times. I don't know which one.

Mr. STEWART. Well, in exhibit 29, we've got a memorandum of that interview on April 25, 1984, and on page 4, there's a statement: "Holmes advised he was very close to Porter." Well, I'll move back a sentence. "Holmes advised sometime later Porter, in talking to him, mentioned Fairchild had not paid him his fee for handling his case. Holmes advised he was very close to Porter, and this information angered him."

Mr. HOLMES. Was that me saying it or was that some FBI agent saying it?

Mr. STEWART. Well, it's written by an FBI agent.

Mr. HOLMES. Well, so, Bud Holmes didn't say it, though, did he?

Mr. STEWART. Well, it's attributed to you.

Mr. HOLMES. I don't know about that, but Bud Holmes didn't say that.

Mr. STEWART. I don't have a transcript of the——

Mr. HOLMES. Well, no. Somebody else said it, but I don't remember it making me mad, no, sir.

Mr. STEWART. OK. Mr. Porter did tell you that the Federal Government hadn't done anything about the case with Drew Fairchild?

Mr. HOLMES. No, sir. Mr. Porter said he didn't know what had happened to it.

Mr. STEWART. OK. So then you picked up the phone to call George Phillips and ask him what was going on?

Mr. HOLMES. Told him I was getting ready to present to the grand jury and that Bill was in there, he didn't know what was going on, couldn't give me any information on it, maybe he, George, could. At that time we laughed about the fact that Bill hadn't been paid.

Mr. STEWART. OK. Now, Mr. Phillips tells you that Drew hasn't lived up to his cooperation agreement, right?

Mr. HOLMES. That's correct.

Mr. STEWART. OK. So if Drew has said that Bob Royals isn't involved in this thing, well, you know the Federal Government doesn't believe him, don't you?

Mr. HOLMES. I don't know what's in their mind. I mean, we didn't—

Mr. STEWART. Well, Mr. Phillips just told—could I ask my question?

Mr. HOLMES. Yes, sir.

Mr. STEWART. Mr. Phillips has just told you what's in his mind, which is that they don't believe Drew Fairchild's cooperating.

Mr. HOLMES. Well, he said he wasn't cooperating. I do not know in what respect he was supposed to cooperate or not. We didn't go into details. He just said that he had not lived up to his agreement of cooperation.

Mr. STEWART. Let's keep moving, then.

Mr. HOLMES. All right, sir.

Mr. STEWART. Mr. Phillips tells you that the Federal Government intends to prosecute Mr. Fairchild but they just haven't gotten around to it?

Mr. HOLMES. He said, "We're going to go ahead and present it to our grand jury because he's not lived up to our plea bargain agreement; that is, he's supposed to cooperate."

Mr. STEWART. OK. And he doesn't give you any real reason why he hasn't gotten to it yet?

Mr. HOLMES. No, sir.

Mr. STEWART. And then you say, "Is it okay if I indict him down here, we prosecute him down here?"

Mr. HOLMES. No. The best I recall, George said, "If you have your grand jury there and if you want to go ahead and handle the case, you can. You might go indict Watkins also."

Mr. STEWART. So it's your testimony that it was his idea that you indict—

Mr. HOLMES. As I recall it, he said it's fine with him. I might have said that, "We're going to present it down here. Do you want me to go ahead and present it here?" We were cooperating with each other. I could have said something to him, or he could have suggested it.

Mr. STEWART. OK, Mr. Holmes. It sounds like you've just changed that a little bit to say that you're not sure if he suggested it or if you suggested it.

Mr. HOLMES. No, sir. That was in 1980, and for me to sit here and tell you right now that I suggested it or he suggested it, it doesn't matter. I know that whatever it was, we came to the agreement that I would present it to my grand jury.

Mr. STEWART. OK. So you're not saying now that it was he who suggested it? You don't remember that precisely?

Mr. HOLMES. I tell you what's in my mind right now, and what was in my mind—

Mr. STEWART. I'm asking you what you know happened. Did he say, "Go ahead, Bud, and indict him. That's fine by me"? Was it his idea or was it your idea, or are you not sure?

Mr. HOLMES. I'm not sure which one. It's my impression that—

Mr. STEWART. I'm really not asking about your impression, Mr. Holmes.

Mr. HOLMES. Well, I can't tell you because I don't have a recording right in front of me of what's said.

The CHAIRMAN. Mr. Stewart, I'm not going to limit you, but I, as one member, fail to see the relevancy of this continuing line of cross-examination to the Articles of Impeachment. I'm not going to reread the Articles of Impeachment. You know what they are. But I fail to see the relevancy of this extensive examination of what happened with another party under his jurisdiction at that time.

Try to move on.

Mr. STEWART. Thank you, Mr. Chairman.

Now, your decision to call George Phillips that day, that was just kind of a quick, impulsive decision? You just picked up the phone and did it, right?

Mr. HOLMES. That's the way I normally did things, yes.

Mr. STEWART. OK. And you've testified, haven't you, that you did that primarily to help Bill Porter collect his fee from Drew Fairchild?

Mr. HOLMES. I've testified about that from one end to the other on the thing. I told Reid Weingarten, when Reid challenged me, wondered why I indicted him. And out of a fit of anger, because I didn't feel like it was any of his business, I retaliated and told him I did it to help Bill Porter collect his fee. I primarily did it because, number one, the grand jury's the one that indicted him, and they indicted him because he was guilty of a felony, which he pled guilty to. And that's the reason he was indicted.

Mr. STEWART. Well, Mr. Holmes, let me ask you just a bit—I want to move on here.

Mr. HOLMES. But that was certainly a motivating thing. That was one of the motivating causes that brought it to my attention.

Mr. STEWART. OK. Now, in June 1985, you had your last grand jury appearance; correct?

Mr. HOLMES. I believe so.

Mr. STEWART. OK. And that's you've made your deal with the Government, you're going in, you're telling everything just as straight as you can?

Mr. HOLMES. That's right. And I reiterated then that the fact he hadn't paid Bill was a reason that I indicted him, or presented it to the grand jury, yes, sir.

Mr. STEWART. Let me read you the testimony from exhibit 55 at page 14.

Mr. HOLMES. All right.

Mr. STEWART. "And I called into it and I inquired into it primarily to help Bill collect his money."

Mr. HOLMES. That's what I testified to.

Mr. STEWART. OK. And that was accurate?

Mr. HOLMES. Well, if I said it. I mean, it was what I was thinking at that time because that's what they wrote down.

Mr. STEWART. You're not saying—

Mr. HOLMES. That's what I testified to, yes, sir. I never denied that.

Mr. STEWART. I believe you were asked at trial if that wasn't a disgraceful thing to do, and you said—

Mr. HOLMES. I said it was disgraceful.

Mr. STEWART. OK.

Mr. HOLMES. I said it about 10 times.

Mr. STEWART. Let me just ask you quickly, what was Bill Porter doing when you were on the phone with George Phillips?

Mr. HOLMES. I don't even know that Bill was even in the office.

Mr. STEWART. Well, did there come a time during this conversation with him when he said, "Bud, don't indict Drew Fairchild. I mean, I'm not trying to get my client in any deeper"?

Mr. HOLMES. I can't remember.

Mr. STEWART. OK.

Mr. HOLMES. All I know is that he was a dope smuggler and I indicted him.

Mr. STEWART. OK. This whole exchange you had with Bill Porter and then George Phillips over taking over the case, Judge Nixon had absolutely zero—

Mr. HOLMES. Zero to do with it. Absolutely nothing.

Mr. STEWART. OK. When you started up on the case, you gave it to Katie Matison in your office—

Mr. HOLMES. I assigned it to her for the—

Mr. STEWART [continuing]. To do the preliminary work?

Mr. HOLMES. Day-to-day clerical part of it.

Mr. STEWART. And she did the preliminary workup for you?

Mr. HOLMES. That's correct.

Mr. STEWART. Preparation for the grand jury presentation?

Mr. HOLMES. That's correct.

Mr. STEWART. OK. You had a hard time getting cooperation from the Mississippi Bureau of Narcotics?

Mr. HOLMES. I don't—she was dealing with them. I don't recall.

Mr. STEWART. You don't recall trying to call Captain Jim Kelly over and over?

Mr. HOLMES. No, sir.

Mr. STEWART. No recollection of that?

Mr. HOLMES. I never did. She might have had trouble. I don't recall it.

Mr. STEWART. So if Captain Kelly remembers that, his recollection's different from yours?

Mr. HOLMES. It's very different, yes. They certainly came before the grand jury and testified.

Mr. STEWART. OK. But—

Mr. HOLMES. Based on their testimony, indictments came out.

Mr. STEWART. You had trouble getting them to the grand jury, though, didn't you?

Mr. HOLMES. We subpoenaed them, yes.

Mr. STEWART. OK. The agents didn't want to come testify, did they?

Mr. HOLMES. They came, yes, sir.

Mr. STEWART. But they said they wouldn't come?

Mr. HOLMES. Originally, Katie called and told me that—I believe it was Captain Dickey said that the Federal Government was handling the case, and that they no longer were involved in it. And I called Captain Dickey and told him no, that we were going to present it, and they came right on.

Mr. STEWART. OK. Now, after this Drew Fairchild's indicted, he was arraigned early September 1981.

Mr. HOLMES. Whenever, yes.

Mr. STEWART. You remember that there was an arraignment?

Mr. HOLMES. I'm sure it was, yes, sir.

Mr. STEWART. Do you recall that at his arraignment Bill Porter was running around the courtroom waving the check from the Fairchilds and bragging about how he'd been paid?

Mr. HOLMES. He could have.

Mr. STEWART. And if you testified to that in your July grand jury—

Mr. HOLMES. As I recalled it, Bill was talking around the courthouse. That'd just be typical of Bill.

Mr. STEWART. But you remember him waving the check?

Mr. HOLMES. I want to say I do, yes, sir.

Mr. STEWART. Now, after that arraignment, then, nothing happens in the case for about 3 months; correct? Drew's case?

Mr. HOLMES. The best I recall, it was set for trial.

Mr. STEWART. OK. But we've looked in the docket. We don't find any motions or anything like that.

Mr. HOLMES. No, sir. A lot of times you don't have that state of—we're not quite as sophisticated.

Mr. STEWART. Thank you, sir.

Then Mr. Watkins, who was the codefendant who was indicted then—

Mr. HOLMES. Same time Drew was, yes.

Mr. STEWART. Then he's picked up in Texas; correct?

Mr. HOLMES. That's correct. In December.

Mr. STEWART. All right. And you thought of Drew as someone who could identify Mr. Watkins for the purposes of your extradition request?

Mr. HOLMES. That's correct.

Mr. STEWART. All right.

Mr. HOLMES. Katie told me she tried to get the Federal Government to furnish a witness who could identify him, and she couldn't get anyone in the Federal Government to identify him and she was desperate because they were getting ready to turn the man loose out in Texas unless we could fax them the identification.

Mr. STEWART. Right. And that was the occasion on which you made the deal with—

Mr. HOLMES. She came to me and told me that and wanted to know maybe if I could get Bill to get Drew to make the identification. That's when I called Bill.

Mr. STEWART. And then you make the deal with Drew Fairchild?

Mr. HOLMES. That's correct.

Mr. STEWART. OK.

Mr. HOLMES. Told Bill that Watkins was going to testify against Drew, but if Drew wanted the same deal the Government had offered him, that I'd be willing to do it if he'd be willing to do the same thing. And Bill said, "Let me call you back," and he called back and said, "Yeah, we'll cooperate."

Mr. STEWART. OK. Then Drew pleads guilty.

Mr. HOLMES. That's correct.

Mr. STEWART. In open court.

Mr. HOLMES. In open court.

Mr. STEWART. All right. And then for the rest of that year, in 1982, his case is continued and continued and continued.

Mr. HOLMES. That's correct.

Mr. STEWART. Because he's had some back surgery? Do you recall that?

Mr. HOLMES. It seemed like he'd had some back surgery or some eye surgery, and that could have been the reason that we put off the trial date originally.

Mr. STEWART. OK.

Mr. HOLMES. But the sentencing part was put off until after he testified against Watkins.

Mr. STEWART. That was part of your—what you required is that he not be sentenced?

Mr. HOLMES. That's correct. I was not going to sentence him unless I could hold the time over his head until after he testified.

Mr. STEWART. OK. Now, throughout this 1982 period, you don't remember any adverse publicity about the case? You've testified about that before.

Mr. HOLMES. I don't recall any, no, sir.

Mr. STEWART. The case is basically asleep. It's just being continued and continued.

Mr. HOLMES. Well, as I recall, they were trying to find Watkins to come in, but Katie was saying—like I said, we had like 1,500 cases a year, and this wasn't a real big case. We had much, much bigger cases we were working on than this one.

Mr. STEWART. And it was about November 1982 when Mr. Watkins was picked up again in Florida?

Mr. HOLMES. Whenever it was.

Mr. STEWART. Well, maybe to refresh your recollection—

Senator REID. Mr. Chairman, what does this have to do with the impeachment?

The CHAIRMAN. Mr. Stewart, I think the Senator from Nevada's inquiry is correct. I don't want to limit you, but Article I of the impeachment says or charges that Judge Nixon did knowingly, and contrary to his oath, make a material, false, or misleading statement to the grand jury.

The false and misleading statement was that Paul Holmes never discussed the *Drew Fairchild* case with Judge Nixon.

Article II is similar: A false or misleading statement, that Judge Nixon never handled any part of it, never had anything to do with it, never talked to anybody with respect to the *Drew Fairchild* case.

That's what we're here to collect evidence on. It's a question of perjury. It's a direct, specific charge voted by the House of Representatives, and I cannot see what this wide-ranging investigation of relationships and internal affairs of the State district attorney's office has to do with the question that the United States Senate has got to resolve.

Mr. STEWART. Well, Mr. Chairman, I hope to be able to tie that up in my closing statement, and I do believe that I'm moving on here, and we're making good progress.

The CHAIRMAN. Well, you can make your arguments on motivation and all of that. I just think you have sufficiently explored questions that certainly flesh out the story, and to which you are entitled, you and Judge Nixon.

But this line of questioning over the last 20 minutes, it's hard to find its relevancy to the Articles of Impeachment, as charged. So I

hope you will try to specify on those articles in your questions, and to conclude.

Mr. STEWART. I'll continue to move on, then.

The CHAIRMAN. Thank you.

Mr. STEWART. Mr. Holmes, I'm just getting up to the point here where the case is passed to the files.

Mr. HOLMES. All right, sir.

Mr. STEWART. There was a continuance filed, an order, in Drew's case. It's House exhibit 18. I believe it's the fourth—fifth document in that exhibit, and the statements made in that order, that "The co-defendant involved here"—this is in Drew's case, so the co-defendant would be Mr. Watkins—"has been apprehended in the State of Florida, and the State of Mississippi expects to extradite him within the foreseeable future."

Do you recall that?

Mr. HOLMES. No, sir. I didn't prepare it. I don't think I ever even read it.

Mr. STEWART. But you do recall, there was a point there in November, where you had Watkins in Florida and were working to extradite him, and expected him in the foreseeable future?

Mr. HOLMES. I knew we were trying to get him—I knew he'd been apprehended, and we were trying to get him at some point, but I didn't keep up. Like I say, we handle like 1,500 cases a year, and this was not one of the big cases. Unless we were in trial on some case that particular time, chances are I knew very little of the details, and whatever's in the record, the record will speak for itself.

Mr. STEWART. You don't question—

Mr. HOLMES. I'm not arguing with you on that. No, sir.

Mr. STEWART. OK. Fine. And it was your intention to get Mr. Watkins back, have Drew testify against him, and to have Drew sentenced?

Mr. HOLMES. That's correct.

Mr. STEWART. And that was always your intention?

Mr. HOLMES. That's right. He'd already been—let me get this straight. He'd already pled guilty. He was already a convicted felon, period. He's always been a convicted felon, the day he got up and said "I plead guilty to a felony." He accepted it.

The only thing that was lacking was the actual putting him on probation subject to his testifying and cooperating as he agreed to. He's been a convicted felon from the day he pled guilty.

Mr. STEWART. And at this point, now, in late November and December 1982, when Watkins is detained in Florida and you're trying to extradite him, that's when Bill Porter comes in to see you again about Drew's case? You remember that?

Mr. HOLMES. Could have. I don't recall it.

Mr. STEWART. Do you remember Bill Porter coming in? I think you talked about it yesterday. He was fussing at you. He's complaining about the case.

Mr. HOLMES. Yes, sir. He was fussing about the fact that Judge Weldy was leaving. He had supported Judge Weldy and Dickie McKenzie was coming in. Yes, sir. Bill was fussing about it.

Mr. STEWART. And he was concerned that Judge McKenzie wasn't going to abide by the plea agreement?

Mr. HOLMES. He was concerned about it.

Mr. STEWART. OK. And that wasn't a crazy idea that Judge McKenzie might—

Mr. HOLMES. No. It was very real, because Judge McKenzie had a right to totally ignore any agreement I had. He had a client out there that pled guilty and was just naked out there.

Mr. STEWART. One of the things Bill Porter suggested to you was that you dismiss the case outright against Drew?

Mr. HOLMES. I don't recall that.

Mr. STEWART. You don't recall testifying about that in the *Mattison* trial a couple of months ago?

Mr. HOLMES. I could have said that. I don't recall. It'd be normal for an attorney to come in and ask for dismissal.

Mr. STEWART. OK.

Mr. HOLMES. I don't deny it. I mean, I'll be glad to say—if you want me to say yes, he said it, I'll say he said it, but I don't recall that.

Mr. STEWART. You don't question your testimony here—

Mr. HOLMES. But look, I've been questioned 150 times on this stuff, and if you go through it you can find 100 discrepancies.

Mr. STEWART. But you did agree to pass the case to the files at that time?

Mr. HOLMES. I did pass it to the file. Yes, sir.

Mr. STEWART. OK. Mr. Holmes, I want to ask you: At this moment in time, when Bob Watkins is found in Florida, and you may be bringing him back—you're trying to bring him back—isn't that absolutely the craziest time to pass the case to the files?

Mr. HOLMES. Well, to be frank, I don't even think I even took it into consideration.

Mr. STEWART. Would it be fair to say that if Bill Porter had not come to you and talked to you in December 1982, that you would not have chosen to pass the case to the files, then?

Mr. HOLMES. Mr. Stewart, like I've told you a number of times, if I hadn't talked to Wiley Fairchild and told Wiley I was going to pass it to the file, Bill Porter hadn't put—you know—there are a lot of "ifs" in there. I know what did happen.

Mr. STEWART. OK.

Mr. HOLMES. And I know that it was in my mind. I told Wiley that night at the farm I was going to pass it to the file, and I passed it to the file.

Mr. STEWART. OK. But my question was just, if Bill Porter hadn't come to you then, you wouldn't have done it then?

Mr. HOLMES. I'm not saying that's—you know—you're asking me just to grab straws. That was certainly a motivating factor. It was one of the—is one of the things. There was a number of factors that are into it.

Mr. STEWART. OK. When you passed the case to the file, then the roof falls in from the press?

Mr. HOLMES. I guess about 3 weeks later. Yes.

Mr. STEWART. And there are editorials appearing in the paper suggesting, implying that you've acted with favoritism?

Mr. HOLMES. Well, I recall the fact that Wiley Fairchild is a wealthy man. We live in a very, very small community, and of course he's a high-profile individual. And any time someone's child,

or someone connected with somebody who the public perceives as having money or influence, then immediately, there's always a lot of publicity connected with it.

Mr. STEWART. Mr. Holmes, we have a tape recording of one of the TV interviews you gave at that time, and Mr. Chairman, I wanted to show that, if I could, at this point. I believe we've arranged for this.

The VICE CHAIRMAN. When was this given, Mr. Stewart?

Mr. STEWART. This was in January 1983, and this is WDAN in Hattiesburg, as I understand it. It's just about 3 minutes long.

The CHAIRMAN. Does the House have any objection to this?

Mr. BARON. No objection.

Senator CHAFEE. I just want to make clear, one question here. Is it stipulated that the case was passed to the files in December 1982?

Mr. STEWART. Yes, sir.

Senator CHAFEE. The month before this?

Mr. STEWART. Yes, sir.

[Videotape shown.]

TRANSCRIPTION OF BUD HOLMES' TELEVISION INTERVIEW

VOICE-OVER. Holmes said he had made a deal with Fairchild's attorney, Bill Porter, to hold off on sentencing Fairchild until the pilot of the plane and Fairchild's co-defendant, Robert Watkins, was brought back to Mississippi for trial. He called it a trial tactic.

HOLMES. I had a verbal agreement with his attorney that until we could bring in the man that he could testify against, that I would hold up any further proceedings. You know, any, because I wanted Drew's testimony, and so when, when we never did bring the man in, the man hadn't been brought in, his attorney told me verbally that he was going to go back, go into court, file the petition to raise what our verbal agreement was, and that I said, well how about letting me just pass it to the file until we can bring Watkins into court.

REPORTER. Well, I think the misunderstanding or the problem that so many people are having with this, is that they cannot understand how other people could have been charged in the case, could have been sentenced in the case, could have been sent to prison in the case, and here is a guy who is from one of the influential families in town, and he seems to be getting off from this thing scot-free.

HOLMES. Well, of course, that just isn't the facts at all. The truth of the matter was, that I'm the one who brought Fairchild into the case. The Federal Government, our local bureau of narcotics, turned the thing strictly over to the federal authorities. I think that he aided and gave a lot of information. And because his name is Fairchild, I'm not going to jump up and be Pontius Pilate and run out and let the public look at how great I am. I'd persecute them all; if he was some John Doe from—that nobody knew anything about, there'd be no hullabaloo at all about this. But, it seems like, uh, if you happen to be unfortunate, to come from an influential name, as you just said, then y'all want to prosecute him and persecute him and convict him in the news, and now how is the poor guy ever going to have any kind of a fair shot?

VOICE-OVER. Holmes said the 270-day rule guaranteeing a defendant a speedy trial had a great deal to do with his motion to send Fairchild's case to the files.

HOLMES. You know the 270-day rule, uh, I have 270 days within which to bring a person to trial. At the end of 270 days in state court, then they can plead the speedy trial, lack of speedy trial, at which point then I'm barred from prosecuting him. In Federal Government they have a 100-day rule. What that does, that prevents prosecutors from sitting and holding over somebody's head a charge, and let it just linger on and on and on. The person is entitled to have his name cleared, or they are entitled to go ahead and be sentenced and start serving their time. This was strictly a decision on my part that I thought that was what was best for the people, best for the prosecution, and in fairness, to Drew Fairchild.

VOICE-OVER. Donna Allday, News 7.

Mr. STEWART. Mr. Chairman, I just wanted to note for the record, for the Senators also, that a transcript of that excerpt is exhibit 73 in our exhibits.

Mr. Holmes, your statements in that interview there were accurate, were they not?

Mr. HOLMES. Well, I just didn't tell it all. You know.

Mr. STEWART. You're trying to trick everybody?

Mr. HOLMES. No, sir. I just didn't, didn't feel—it would have been real nice to get up and say, well, not seven months ago Judge Nixon and I were at my farm, we called Wiley and said we were going to pass it to the file. It just was not my decision to tell the TV that. No, sir.

Mr. STEWART. In January 1983, Mr. Watkins did return from Florida?

Mr. HOLMES. Yes, sir, and I reinstated to the active docket.

Mr. STEWART. Right.

Mr. HOLMES. Like I said in the interview that day.

Mr. STEWART. No harm done to the case?

Mr. HOLMES. No, sir. Not one iota.

Mr. STEWART. And Drew's still a convicted felon?

Mr. HOLMES. He's still a convicted felon.

Mr. STEWART. All right. And it turned out to be a totally meaningless step, to pass it to the files?

Mr. HOLMES. Meaningless step.

Mr. STEWART. All right.

Mr. HOLMES. No crime committed whatsoever. Politically dumb. I wasn't running for reelection anyway, but, politically dumb. Yes, sir.

Mr. STEWART. You said in that interview that you were concerned about the 270-day rule?

Mr. HOLMES. A couple times—your 270-day rule actually applies prior to trial. I don't know—

Mr. STEWART. Mr. Holmes, can you wait for the question.

Mr. HOLMES. I apologize—excuse me.

Mr. STEWART. My question was, the 270-day rule doesn't apply to sentencing, does it?

Mr. HOLMES. No, sir. At the time I was giving the interview, I thought it did.

Mr. STEWART. Now you talked just now about how you thought 7 months before you'd already had this phone call with Wiley Fairchild. Let's run through that. I want to talk for a second about the date.

You've also associated this phone call with the turkey hunting season. Isn't that fair to say?

Mr. HOLMES. No, sir, not necessarily, because turkey hunting season was over at that time, and the turkeys I'd had at the farm, there'd be some little—you know—I don't know—2, 3 or 4 weeks. I could not—it was some time after that. Yes, sir.

Mr. STEWART. But you associate it with some time close to—

Mr. HOLMES. Going out to get the turkeys. Yes, sir. They'd been at the farm some 2, or 3 weeks. Month. I don't know.

Mr. STEWART. And in Mississippi, the turkey hunting season is in the spring, correct?

Mr. HOLMES. Yes. That's right.

Mr. STEWART. All right. So, based on that association, the phone call could not have occurred in December or in November of the year?

Mr. HOLMES. Not unless the turkeys had been out there a long time.

Mr. STEWART. By the same token, you remember the phone call happened at around sunset, around 7 p.m.?

Mr. HOLMES. Yes, sir. It was turning dark, the best of my memory. It was kind of gray, dark, and we drove out there.

Mr. STEWART. And in December, the sun sets around 5 o'clock, so it couldn't have been in December?

Mr. HOLMES. Could. I don't know.

Mr. STEWART. Now you recall when you first testified about the date of the phone call, you said it was either in 1982 or 1983? You said that in the grand jury, in February 1985?

Mr. HOLMES. Well, I went back and specified when Gary Turner got married, and that was what I based my case on, or my recollection.

Mr. STEWART. But your first testimony you recall was that it was in one of those two years?

Mr. HOLMES. Could have been. I had no idea. The only thing that—they told me to come to the grand jury and explain to them was a continuance, is the only thing they wanted me to explain. So I didn't go in there with any—if they'd told me to look up stuff—excuse me.

Mr. STEWART. They told you that when you went for the first time in July 1984. Mr. Weingarten said, just come in and explain the continuance?

Mr. HOLMES. Yes, sir.

Mr. STEWART. And you felt a little sandbagged by that, because then you got in there, and he asked you all sorts of questions, isn't that right?

Mr. HOLMES. That's correct.

Mr. STEWART. OK. I was asking about February 1985. It's your third grand jury appearance. That time, you were asked when the phone call was, and you said 1982 or 1983. Do you recall that?

Mr. HOLMES. If I said it, that's what I've said.

Mr. STEWART. And it had nothing to do with the continuances? Your statement there wasn't unprepared because they just told you they were going to ask about the continuances, because that would have been seven months before?

Mr. HOLMES. Mr. Stewart, when I went in there, they asked me many, many, many things, and just like right now, if you had asked me, was it in 1982 or 1983, I'd have to look it up to tell you if it was 1982 or 1983.

Mr. STEWART. All right. So what you did——

Mr. HOLMES. I don't know. I don't——

Mr. STEWART. What you did is you looked at your office calendar, and tried to figure out what date it was?

Mr. HOLMES. Whatever date that Gary Turner got married on, and whatever date—that was the date prior to that.

Mr. STEWART. Except you've also said that it could have been a different date?

Mr. HOLMES. Could have been. I'm just telling you—you asked me my best recollection. I'm giving you my best recollection.

The CHAIRMAN. Let's move it.

Mr. STEWART. Mr. Chairman, I believe I am, and I'm doing my best here, and I'd appreciate being given the opportunity to prepare my case and present it.

The CHAIRMAN. Mr. Stewart, you're going to be allowed to prepare and present your case. You're not going to be allowed to ask him the same question three times, when he says he doesn't remember. And he said he doesn't remember, and he says it three times. That's enough. We heard him. You're not going to be able to get him to change his mind. If he doesn't remember, he doesn't remember.

I'm not going to let you badger him.

Mr. STEWART. I don't believe I've been badgering him.

The CHAIRMAN. That's my opinion, I'm telling you. You're redundant. You're not proceeding on this point, in redundancy. I advise you to either go on or ask him a new question.

Mr. STEWART. Mr. Holmes, could you look at the green book, the fat green book there, what's marked as exhibit 17.

It's a telephone message slip. We didn't have it at trial. The FBI had it at that time. It reflects a phone call message from you to Judge Nixon.

This was Judge Nixon's secretary, signed there, "B.L." You know Betty Lou Watkins, don't you? It says that you called around noon that day. I know it's a long-shot. Have you got any recollection of calling Judge Nixon that day?

Mr. HOLMES. No, sir. We're very close friends. I called him probably—could have been about a quail-hunting trip, or anything. I don't know.

Mr. STEWART. Do you recall that on that day, he came out and borrowed some Hank Williams, Sr., records from you?

Mr. HOLMES. He came out to my house, and he'd finally gotten some culture, and wanted to tape a bunch of my Hank Williams records so he could play them in his car.

And so he came out and took them, and was going to make some tapes of them. Was going to make me a copy of the tapes. I was very proud of him.

Mr. STEWART. OK. So you loaned those records to Judge Nixon?

Mr. HOLMES. Yes, sir.

Mr. STEWART. And you sat around and listened to some of those records before he borrowed them?

Mr. HOLMES. We did. Yes, sir.

Mr. STEWART. Do you recall whether that was the occasion—March 1983—when you made that phone call to—

Mr. HOLMES. I don't recall it. I don't recall making—I told you when I recall it being made.

Mr. STEWART. Let me try another angle here. You said yesterday, that when you had this conversation, you were feeling cocky, it was your fourth year as district attorney and you weren't going to run for reelection?

Mr. HOLMES. No, sir. I didn't say my fourth year.

Mr. STEWART. Well, my notes suggested you said that. We can be corrected by the record.

Mr. HOLMES. OK. Whatever.

Mr. STEWART. OK. But you don't recall that it was in your fourth year as district attorney?

Mr. HOLMES. No, sir. My fourth year was in 1984. Excuse me. It would have been 1983.

Mr. STEWART. Was 1983 your fourth year?

Mr. HOLMES. Yes. Calendar year of 1983 would have been my fourth year. And final.

Mr. STEWART. And do you recall a time when you were on the phone, and this was an exhibit at trial, and you talked to Pat McMullen on the phone? He's a fellow you knew in Mississippi?

Mr. HOLMES. Yes, sir.

Mr. STEWART. And you discovered afterwards that he had taped your phone call?

Mr. HOLMES. Whenever that was. I don't remember what year that was.

Mr. STEWART. Do you recall—and this is exhibit 56 in our materials—that you said, in describing this conversation with Judge Nixon, that you were talking about a deal that had been made a year earlier?

Mr. HOLMES. That's exact—well, if I said that, I'm sure that's what I said—that-a-way—I'd have paraphrased it, and I didn't hold it to four months or six months.

Mr. STEWART. OK. Your statement was: "It was the scene of the crime, horrible crime. Goddamn. Two drunks call up somebody and say that all they're going to do is see to it that the agreement that had been worked out a year earlier takes place."

Do you recall seeing this before?

Mr. HOLMES. Yes, sir. That would have been my conversation with Pat McMullen.

Mr. STEWART. And if the conversation was in May 1982, the deal was worked out only four months before?

Mr. HOLMES. Well, I've been mistaken, then, and I didn't—I wasn't that accurate. I was just sitting here, paraphrasing, commiserating with Pat.

Mr. STEWART. Let me just ask you, quickly, moving on to 1983 and when you're leaving office. Bill Porter's just drowned, the end of your term.

Mr. HOLMES. Yes, sir. November 4, 1983.

Mr. STEWART. OK. And you want to tell Wiley Fairchild that you're still willing to go through the plea agreement.

Mr. HOLMES. At that time I wasn't. I just—I wanted to go ahead and complete it because I told Bill that before I left office, that I'd see to it that Drew—you know—was sentenced, and that it was going to be just like we'd agreed on.

Mr. STEWART. So you grabbed the local judge, Judge McKenzie, and take him on out to Mr. Fairchild's house? Excuse me. Office?

Mr. HOLMES. No, sir. We got in, and I called Carroll Ingram. I thought Carroll would be representing Drew. Told him I wanted to go ahead and complete the agreement with Drew before I left office. This was in—like 2 or 3 days before I was to leave office. The latter part of December.

Mr. STEWART. Mr. Holmes, I'm really trying to move along here, and I think you covered this—

Mr. HOLMES. OK. Ask, and I'll answer yes or no. OK?

Mr. STEWART. All right. My question was just you and Judge McKenzie—you talked to Judge McKenzie, and you and he went out to see Mr. Fairchild?

Mr. HOLMES. That's correct. After Carroll Ingram told me that we needed to go see Wiley to get the thing concluded.

Mr. STEWART. So you just impulsively called up Judge McKenzie and said let's ride out to Fairchild's?

Mr. HOLMES. That's correct. I said let's go on out. Wiley might have some questions and maybe you can explain them to him.

Mr. STEWART. All right. And if it looks bad in hindsight, that you went out there with Judge McKenzie, well, you just didn't think of it at the time?

Mr. HOLMES. At the time I thought nothing about it. Still is no harm done. I mean, I was just trying to get the thing concluded.

Mr. STEWART. Right. But you didn't talk to Drew Fairchild, though, at that point, about what he wanted to do with this?

Mr. HOLMES. No. I thought that Carroll was—I assumed Carroll was directing me in the proper way to go because he was the one I thought represented him, and he had represented Drew in the past, although Carroll told me he was not representing Drew, but suggested I go talk to Wiley.

Mr. STEWART. So Carroll did tell you that he wasn't representing Drew?

Mr. HOLMES. That's correct, and suggested I go talk to Wiley.

Mr. STEWART. OK. Then you leave office and you never think you'll worry about the *Drew Fairchild* case again?

Mr. HOLMES. When I left office, I thought that was somebody else's headache.

Mr. STEWART. OK. I want to move to the Federal investigation, when it started up. In April 1984, you've testified you got a phone call from Judge Nixon?

Mr. HOLMES. That's correct.

Mr. STEWART. All right. And he's just been interviewed by the FBI and the Justice Department, and he's hot?

Mr. HOLMES. Yes. That's right.

Mr. STEWART. OK. He's just incensed? You've testified to that?

Mr. HOLMES. Very mad.

Mr. STEWART. He's as angry as you've heard him, isn't he?

Mr. HOLMES. He was incensed. He was enraged, and rightfully so.

Mr. STEWART. All right. And he explained to you that they were investigating the mineral properties purchased from Wiley Fairchild?

Mr. HOLMES. That's right. He was of the—and I gathered he was of the impression that they were tantamountly accusing him of fixing the *Drew Fairchild* case, from moving it from the Federal to the State, to everything in exchange for these minerals. I mean, that was the impression I got because he was incensed about anyone investigating such a ridiculous set of facts.

Mr. STEWART. And he told you there was nothing to any of that, didn't he?

Mr. HOLMES. Well, now, he didn't—you know, I knew good and well that there'd never been any "Wiley's going to give me this if I can get that done." I'd never heard that or implied that he'd done

that, because the mineral transfers and deeds that the judge had gotten had nothing to do with any plea bargaining, or my indicting Drew, or anything else.

Mr. STEWART. OK. And the question of this phone call that you had with Wiley from your farm, that never came up in that conversation on the phone with Judge Nixon?

Mr. HOLMES. Not specifically; no, sir. He just was very, very emphatic that he had told them that he had never talked to anyone at any time, State or Federal, about the *Drew Fairchild* case. Had no knowledge of it.

Mr. STEWART. And he's telling you, over and over, that he's had nothing to do with this—any connection between the investment—

Mr. HOLMES. He had told them, on more than one time, that he had knowledge of it, or never talked to anyone about the case.

Mr. STEWART. And what he's told you they're asking him about is how the case got from Federal to State authorities, and whether there was some kind of bribe involved, isn't that right?

Mr. HOLMES. I remember him specifically saying those exact words. That was the impression I got, that they were inquiring into his involvement in the handling of the *Drew Fairchild* case.

Mr. STEWART. Now you recalled that a couple of weeks later, Judge Nixon asked you, when you were talking to him, about some tapes?

Mr. HOLMES. Not about some tapes. Wanted to know if the—

Mr. STEWART. Wiley had taped?

Mr. HOLMES. He wanted to know if the conversation that he and I had had with Wiley Fairchild had been taped, and could I find out.

Mr. STEWART. OK. And you don't know if he was asking about that because he wanted to hear the tape, see what was on it?

Mr. HOLMES. I assumed because it—

Mr. STEWART. Please answer my question.

Mr. HOLMES. No, sir. I do not know.

Mr. STEWART. OK. Because the phone call itself was innocent, wasn't it? Nothing happened wrong on that phone call?

Mr. HOLMES. No, sir.

Mr. STEWART. And the tape would reveal that nothing happened wrong on that phone call, wouldn't it?

Mr. HOLMES. That's right. I wish they had taped it.

Mr. STEWART. And it's your recollection that you asked Carroll Ingram that question in the spring of 1984, then, before you went to the grand jury, correct?

Mr. HOLMES. I asked Carroll right after I talked to the judge.

Mr. STEWART. And that's before you go to the grand jury in July?

Mr. HOLMES. That's right.

Mr. STEWART. OK. You go to the grand jury in July. This is the first time. This is the time you felt like you'd been a little bit sand-bagged?

Mr. HOLMES. That's correct.

Mr. STEWART. And before you get there, Judge Nixon hasn't told you anything that you ought to say?

Mr. HOLMES. No, sir.

Mr. STEWART. He's never told you what he's going to say?

Mr. HOLMES. Well, he told me on the phone he'd never talked to anybody at any time, and then he had a press statement. There was a public statement of him on television reading it, saying he'd never talked to anybody, at any time, about the case.

Mr. STEWART. Well, you didn't question him, whether that was his actual feelings, that was his recollection at that time, did you?

Mr. HOLMES. No, sir. I just took it at point blank what I saw on television and what was in the newspaper.

Mr. STEWART. He never asked you to go to anybody else, to Wiley Fairchild, and find out what they were testifying?

Mr. HOLMES. No, sir.

Mr. STEWART. Anything like that? Before you go to the grand this first time, there's a lot of publicity about the investigation, isn't there?

Mr. HOLMES. Yes, sir.

Mr. STEWART. It was pervasive? It was all over, wasn't it?

Mr. HOLMES. Yes, sir.

Mr. STEWART. And it's directed at Judge Nixon, isn't it?

Mr. HOLMES. It's directed, period.

Mr. STEWART. But there's all this—oil investments are covered?

Mr. HOLMES. I mean it was—

Mr. STEWART. Directed to you, too?

Mr. HOLMES. Every one of us was catching flak. Oh, yeah. I mean, you know, everybody in the courthouse to—

Mr. STEWART. All right. Let me back up for a second. Before you go to the grand jury you're interviewed by the FBI. This is the first time you're interviewed by the FBI.

And we've got a memo of that interview, which is exhibit 29. Do you recall that you repeatedly denied, during that interview, that you'd ever talked to Wiley Fairchild about Drew's case?

Mr. HOLMES. I do. I guess, if it's in there. But I know I never told anybody I'd talked to him, because the only time I'd talked to him I was with Judge Nixon.

Mr. STEWART. Well, except for the time you went with Judge McKenzie?

Mr. HOLMES. Well, I told them about going to Judge McKenzie, the first interview I had with them.

Mr. STEWART. Well—

Mr. HOLMES. Go back and get the first one. See if we don't discuss it in there. I mean—

Mr. STEWART. Well, you did. That's right, Mr. Holmes.

Mr. HOLMES. That's correct. Yeah. I did. Sure I did.

Mr. STEWART. OK. At page 7, the statement is made: "Holmes specifically denied he has personally met with Fairchild, either in his office or Fairchild's office on the matter of his son, Drew Fairchild."

Mr. HOLMES. Go and get through the rest of it.

Mr. STEWART. "And then, later on, on being directly questioned as to whether he had ever had occasion to appear with Judge Richard McKenzie in Wiley Fairchild's office, Holmes advised he had."

Mr. HOLMES. That's correct.

Mr. STEWART. "Holmes offered no explanation as to why he'd made no mention of this matter before."

Mr. HOLMES. I just didn't. I mean, I didn't see any point in it.

Mr. STEWART. That session you had with Judge McKenzie, though—we'd covered this—had nothing to do with Judge Nixon?

Mr. HOLMES. They could have put the thing on television as far as I was concerned. A dozen people out there.

Mr. STEWART. When you went before the grand jury in July, you told them that you'd never met with Drew Fairchild between the drug bust in 1980 and the indictment in 1981?

Mr. HOLMES. I did not recall meeting with him, and to this good day I don't think he's in the office with Bill Porter.

Mr. STEWART. OK. You didn't recall this?

Mr. HOLMES. I do not recall him being there.

Mr. STEWART. You got indicted for that statement?

Mr. HOLMES. Yes. The indictment said that I didn't tell the—it was a false declaration because he was there. I do not recall him being there. He might have been. You know, I'd have been glad to say he was there.

Mr. STEWART. And when you said he wasn't here, that had nothing to do with protecting Judge Nixon?

Mr. HOLMES. No, sir.

Mr. STEWART. OK. And then there was a break in your testimony and you're called back in September to finish up. Do you remember that?

Mr. HOLMES. Yes, sir.

Mr. STEWART. All right. And during that break you talked to Karl Kepper, who was Wiley Fairchild's lawyer?

Mr. HOLMES. I did.

Mr. STEWART. And you asked Kepper if Wiley had been questioned about the phone call?

Mr. HOLMES. I guess I did. I don't recall.

Mr. STEWART. And that was——

Mr. HOLMES. Now I could have because that'd have been natural, I'm sure, to have asked him.

Mr. STEWART. All right.

Mr. HOLMES. I talked to Karl a dozen times.

Mr. STEWART. And isn't this the time when you went to Carroll Ingram and asked him about the phone call, could it have been taped?

Mr. HOLMES. Could have been. My recollection is that after talking to Judge Nixon I went to Carroll. But it could have been later on. I'm not going——

Mr. STEWART. So——

Mr. HOLMES. It could have been after the grand jury met. I'm just telling you what I—my memory reflects—but my memory could be wrong.

Mr. STEWART. In the September grand jury, you were questioned about whether you sought the *Drew Fairchild* case. Whether you sought it from George Phillips. You remember that?

Mr. HOLMES. I remember those words. Yes, sir.

Mr. STEWART. Yes. And you said you hadn't, and you got indicted for that?

Mr. HOLMES. I had an indictment that said I did seek it. Yes.

Mr. STEWART. And that testimony had nothing to do with Judge Nixon?

Mr. HOLMES. No, sir—unless they're trying to say it was some big mastermind investigation.

Mr. STEWART. During this period, you are getting pretty nervous about this investigation; it's pretty clear they're coming after you?

Mr. HOLMES. They done got serious, yes, sir.

Mr. STEWART. OK. I want to ask you some questions about this February appearance. There is a moment that comes up when you know Wiley Fairchild's cut a deal; his case doesn't go to trial.

Mr. HOLMES. Yes, sir.

Mr. STEWART. OK. And you hear that Carroll Ingram has confirmed to the Government that there was a phone call from your farm to Wiley Fairchild.

Mr. HOLMES. Yes, sir.

Mr. STEWART. OK. And you can figure out that the two people now who are saying that are Wiley Fairchild and Carroll Ingram; correct?

Mr. HOLMES. I assume so, yes, sir.

Mr. STEWART. OK. And you've got a subpoena now to go back to the grand jury in February, and you figure you are going to be asked about this again.

Mr. HOLMES. I assumed that was going to be one of the areas of questioning.

Mr. STEWART. OK. And you were concerned because you had not mentioned the phone call before.

Mr. HOLMES. That's correct. They didn't ask me about it, and I didn't volunteer it.

Mr. STEWART. OK. So you go to talk to Carroll Ingram, and you ask him point-blank if he has talked to the Government about the phone call, correct?

Mr. HOLMES. That's correct.

Mr. STEWART. And he says he did, and there was nothing wrong to it—that the Government told him there was nothing wrong with it.

Mr. HOLMES. He told me that he'd come up and met with the Government, and the Government was just trying to get the thing cleared up, that there was absolutely nothing wrong with Judge Nixon talking to me on behalf of Drew Fairchild, that it was a State case; there was no impropriety there, and if we'd just go in, recant, tell the full story, that that would be the end of it, and it would all go away.

Mr. STEWART. And you told Carroll Ingram, "You've made me out to be a perjurer."

Mr. HOLMES. I think those were my words.

Mr. STEWART. OK. Now, you weren't asked about this yesterday, but then you went back to see Mr. Ingram a couple of days later, didn't you, a second time?

Mr. HOLMES. I'm not denying it; I don't recall it.

Mr. STEWART. You don't recall going back to Mr. Ingram and suggesting to him that maybe he misremembered that phone call?

Mr. HOLMES. No. I think it all took place at one—it might have been a second time. It was my recollection that I just went by there the one time. I could have gone back; I'm not denying it. I just don't independently recall seeing him but the one time.

Mr. STEWART. OK. If you testified on page 979 of your trial transcript that you went back over to see Carroll a second time on Monday morning, or Monday night, you say—it could be day or night—

Mr. HOLMES. I remember seeing him at night. I don't recall seeing him in the daytime. If I did, I tell you, I would say I did. If you show me documentation, I sure won't deny it.

Mr. STEWART. But you do remember telling Carroll Ingram, saying to him, "Carroll, are you sure you are remembering that correctly? Maybe you remember it wrong."

Mr. HOLMES. Oh, yes, I remember I was talking to him very strong about it, trying to check out exactly what his remembrance was, and it was pretty accurate.

Mr. STEWART. Now, that was a bad move on your part, wasn't it, because it kind of looked like you were leaning on Carroll Ingram, didn't it?

Mr. HOLMES. Yes. It was stupid. I did a lot of stupid things during this thing.

Mr. STEWART. He's a cooperating Government witness; the first thing he is going to do is tell the Government that you've been by to see him.

Mr. HOLMES. Pardon?

Mr. STEWART. He is a cooperating Government witness, and the first thing he is going to do is tell the Government you've been by to see him, and you've been leaning on him.

Mr. HOLMES. You know, I-guess now, after everybody knew everybody, I thought everybody was just trying to—that since there had been absolutely no crime, and it is still totally baffling to me what the whole impact of this thing was, I was thinking they had finally come to the conclusion that no crime had been committed, which they ultimately came to, and the thing would finally end. I mean, I just—it was very baffling, yes, sir.

Mr. STEWART. OK. Around the same time, you went to see Katie Matison, also, your former assistant district attorney; do you remember that?

Mr. HOLMES. It seemed like I saw her just prior to trial, I believe.

Mr. STEWART. You don't remember—

Mr. HOLMES. I saw her two or three times. Whatever time it was.

Mr. STEWART. You don't remember seeing her in February? I won't ask you about it if you don't remember it.

Mr. HOLMES. If you say—if I testified to it—whatever is in my trial testimony. I saw Katie on more than one—I want to say she was in the hospital one time, and I saw her, or maybe talked to her on the phone while she was in the hospital.

Mr. STEWART. OK, let's keep going.

You also went to see Judge Nixon.

Mr. HOLMES. I saw him over in chambers, yes, sir.

Mr. STEWART. OK. And—

Mr. HOLMES. I saw him in his car. Now—

Mr. STEWART. That's what I was asking about, when you were in the car.

Mr. HOLMES. I saw him in chambers one time, and I saw him in his car another time.

Mr. STEWART. All right. Now, you are pretty nervous at this point, aren't you?

Mr. HOLMES. Yes. I was getting ready to go to the grand jury, and Carroll tells me we can get out of the thing, just go in there and just tell them the flat truth about the doggone phone call because there was no crime committed—just go in there and just tell them. The only thing, there is going to be a little bit of embarrassment to him, but forget it.

Mr. STEWART. OK. I want to slow down here and just take this one step at a time.

Mr. HOLMES. OK.

Mr. STEWART. Your testimony has been that Judge Nixon said to you there was no such phone call.

Mr. HOLMES. That's correct, yes.

Mr. STEWART. All right. And he also chastised you for telling Carroll about the phone call, for talking to him about it.

Mr. HOLMES. That's correct.

Mr. STEWART. Now, those are totally inconsistent, aren't they, Mr. Holmes?

Mr. HOLMES. Just as inconsistent as they can be, but that's exactly what occurred.

Mr. STEWART. That's the way you remember it.

Mr. HOLMES. That's exactly the way I remember it.

Mr. STEWART. OK. You don't know if maybe you are misremembering it, do you?

Mr. HOLMES. Mr. Stewart, I'm telling you the way I remember it right now, and I think my testimony will bear it out that way.

Mr. STEWART. OK. But you also got the impression that Judge Nixon was not overly concerned about the phone call.

Mr. HOLMES. Judge Nixon—I didn't get the impression he was particularly worried at all about it.

Mr. STEWART. OK. So he wasn't all upset that Mr. Ingram had confirmed the existence of the phone call.

Mr. HOLMES. Well, you know, he got on me for even telling Carroll about it, and that's when I told him, I said, "Well, Judge, you're the one that asked me to go to him and find out if they were taped."

Mr. STEWART. Well, let's follow up on this, then. After you talked to Judge Nixon, you went and talked to your former law partner and friend, Jim Dukes.

Mr. HOLMES. Jim Dukes, that's correct.

Mr. STEWART. And you explained all this to Mr. Dukes.

Mr. HOLMES. Right.

Mr. STEWART. And didn't he say to you, "Bud, that doesn't make any sense at all. Let me try to get to the bottom of this, and I'll call Bill Goodman," who was Judge Nixon's lawyer at the time.

Mr. HOLMES. I don't know if he called. I remember he said, "Let's call"—that Judge Nixon—anyway, he said, "Let me call Bill Goodman. We ought to be going through him. Let's go through Judge Nixon's attorney."

Mr. STEWART. OK. And he calls Bill Goodman, and Bill Goodman tells Jim Dukes, you get the story—Judge Nixon remembers the phone call.

Mr. HOLMES. That was the next day—yes, I believe we drove to Collins and met him up at Collins, Mississippi.

Mr. STEWART. OK. So you get the message now that Judge Nixon does confirm that there was a phone call.

Mr. HOLMES. I believe that's correct, yes.

Mr. STEWART. OK. And does that make you wonder if maybe you misunderstood what he was saying the night before?

Mr. HOLMES. It made me wonder what was going on. You know, when he told me that, yes, sir, it created questions in my mind.

Mr. STEWART. OK. So then when you go in to the grand jury in February, you've got the message loud and clear—Judge Nixon confirms that the phone call occurred.

Mr. HOLMES. Well, I don't know that he confirmed the substance of the phone call. I do know that he acknowledged that there was a phone call. He acknowledged he was out at my house, and it was acknowledged that there was a phone call made to Wiley Fairchild, yes, sir.

Mr. STEWART. OK. So when you go in to the grand jury and testify, there is no reason to protect Walter Nixon by soft-pedalling the phone call.

Mr. HOLMES. No, sir. It is my understanding from Bill Goodman that Judge Nixon's version was that I picked up the phone and called Wiley out of the clear blue just to reassure him that I was going to do the deal, just out of the clear—I said, now, that's stupid.

Mr. STEWART. Mr. Holmes, that's the first time you have ever said that that was your understanding of what Mr. Goodman said. Are you positive, sitting here—

Mr. HOLMES. No, sir. I have said that—I think if you go back and check it, where Bill Goodman claimed that Judge Nixon said that I developed "telephone-itis".

Mr. STEWART. Yes, that's true. You've testified to that before.

Mr. HOLMES. That's correct.

Mr. STEWART. OK.

Mr. HOLMES. And that I picked up the phone, and that he didn't know why I did it; that I just merely, out of the clear blue, picked up the phone and called Wiley while he is out there, and then I took the phone and shoved it in his hand.

Mr. STEWART. When you went to the grand jury, though, you told them there was a phone call.

Mr. HOLMES. Yes.

Mr. STEWART. And you told them that Judge Nixon made the phone call.

Mr. HOLMES. Whatever I testified to.

Mr. STEWART. That's in your testimony; it is exhibit 46.

Mr. HOLMES. OK.

The CHAIRMAN. What is your remembrance now? Who made the phone call?

Mr. HOLMES. He did.

The CHAIRMAN. He called Wiley and then put you on the phone?

Mr. HOLMES. I asked him for the phone and said, "Let me speak to him."

Mr. STEWART. And you also told the grand jury that he remembered that you placed the phone call.

Mr. HOLMES. Whatever I told them. I don't recall.

Mr. STEWART. OK. But that was a detail at that time to you; it didn't seem like a big deal, did it?

Mr. HOLMES. No, sir. I was trying to soft-pedal it because Judge Nixon was taking, as I gathered it, an approach that it was just a real light thing, and I was having to explain why I didn't explain it to him the first time I was in the grand jury, so I tried to soft-pedal it to the grand jury.

Mr. STEWART. Let's move on. When you ran into——

Mr. HOLMES. And I still didn't want to unload on him.

Mr. STEWART. You don't think you've unloaded on him here, do you?

Mr. HOLMES. No, sir. I just told the exact, pure facts. I have been trying to tell it without trying to embarrass him. The man had made a statement that he never had talked to anybody at any time, and to go in and contradict it, I felt like then would create a controversial atmosphere, and I was just trying to protect the man.

Mr. STEWART. I just want to—now, we have been through all these other problems you had where you weren't protecting him with your testimony—OK?

Mr. HOLMES. Well, he wasn't involved in those.

Mr. STEWART. OK. I want to move on, though. My question was you don't feel like you've unloaded on him here, do you?

Mr. HOLMES. No, sir. I just told about the phone call, the substance as I recall it, the date when I recalled it, which is totally contradictory to his public statement and television statement.

Mr. STEWART. You were never inside Walter Nixon's mind; you didn't know what he was remembering.

Mr. HOLMES. No, sir, I was not, but I know one thing. I know when he publicly stated that he had never talked to anybody about it, I knew good and well that was not my remembrance.

Mr. STEWART. You never said that to him——

Mr. HOLMES. And I certainly had nothing to hide, myself, at all. I had nothing to hide. There was no crime committed whatsoever. There was no problem. Without that statement—he made a public statement. I could have gone in to that grand jury just as open as I am right now and told them about everything and asked Wiley or whoever to come in and please plea it.

Mr. STEWART. And that was your decision to go in and give the testimony you did.

Mr. HOLMES. I went in there—when he had said what he did, and they didn't ask me about it, I didn't say it. Of course, I ultimately got indicted for it.

Mr. STEWART. The last time you talked to Judge Nixon before your trial about it, you ran into him at a social event.

Mr. HOLMES. I ran into him down at Sam Peter's, yes, sir.

Mr. STEWART. OK. And he told you again that he remembered the phone call; he confirmed it to you one more time.

Mr. HOLMES. As I recall, he said, "I don't know why you called Wiley."

Mr. STEWART. OK. But he did confirm to you that the phone call happened.

Mr. HOLMES. Yes. That was the way I remember him telling me. He said, "I don't know why you called Wiley."

Mr. STEWART. OK. And if he's got a different recollection about who placed the call, that may just be that he's got a different recollection from yours; is that right?

Mr. HOLMES. Yes. I am telling this panel today what I believe to be the complete truth. Now, I'm not saying that his memory wouldn't be something different, and he would be telling them what he believed to be the truth. I'm telling them what I believe to be the truth.

Mr. STEWART. OK. Well, let's talk about that just quickly. I want to run through just a few of these. It won't take very long.

When Drew Fairchild was indicted, it has been your recollection and you have testified to this, that you did not call Wiley Fairchild and tell him that Drew was indicted.

Mr. HOLMES. Did not.

Mr. STEWART. You did not do that.

Mr. HOLMES. Did not.

Mr. STEWART. And if Mr. Fairchild recalls that you did, then his recollection is just different from yours.

Mr. HOLMES. His recollection is 180 degrees from mine.

Mr. STEWART. OK. Your recollection is that Carroll Ingram came to your office with Judge Nixon on the evening of the phone call, isn't that right?

Mr. HOLMES. According to my records up there and my recollection, Carroll came by there—I know he came by with him on some occasions.

Mr. STEWART. OK. And if Mr. Ingram doesn't recall that, then your recollection is just different.

Mr. HOLMES. He doesn't, and that's just a difference in memory.

Mr. STEWART. OK. And you remember Judge Nixon telling you that Wiley had asked him to put in a good word for his boy.

Mr. HOLMES. That's right, which there is nothing wrong with that.

Mr. STEWART. OK. Nothing wrong with it——

Mr. HOLMES. No.

Mr. STEWART [continuing]. But if he doesn't remember saying it, his recollection is just different.

Mr. HOLMES. We are different.

Mr. STEWART. OK. You recall telling Wiley during the phone call that you had passed Drew's case to the files.

Mr. HOLMES. I told him I would pass it to the files.

Mr. STEWART. OK. And if Mr. Fairchild doesn't remember that, then his recollection is just different from yours.

Mr. HOLMES. Just different.

Mr. STEWART. All right. You recall Judge Nixon telling Wiley on the phone call that he appreciated the opportunity to invest with him. You do recall that?

Mr. HOLMES. I remember that, yes, sir, that's correct.

Mr. STEWART. You recall that, OK. And if neither Wiley Fairchild nor Judge Nixon remembers that, their recollection is just different from yours.

Mr. HOLMES. We're just different.

Mr. STEWART. OK. You have testified, I believe, that you spoke to Carroll Ingram a couple days after the phone call, and he told you that Wiley was on cloud nine about that phone call.

Mr. HOLMES. That's right.

Mr. STEWART. And if Mr. Ingram doesn't recall that at all, then his recollection is just different from yours.

Mr. HOLMES. We're just different, that's right.

Mr. STEWART. And if what he recalls is that he gave you that kind of message after you came out with Judge McKenzie in December 1983, a year-and-a-half later, then his recollection is just different from yours.

Mr. HOLMES. That's correct. We're just different, yes, sir.

Mr. STEWART. All right. And if you remember Judge Nixon asking whether the phone call was taped, whether Wiley had made a tape of that call, and Judge Nixon doesn't recall it, your recollection is just different.

Mr. HOLMES. We're just different.

Mr. STEWART. All right. And if you've testified that you asked Carroll Ingram about the tape in the spring of 1984, and Carroll remembers that it was after the grand jury, in July or August 1984, your recollection is just different.

Mr. HOLMES. Just different.

Mr. STEWART. And in that parking lot with Judge Nixon in February 1985, if you think Judge Nixon told you there was no call, and if he remembers telling you there was a call, well, your recollection is just different there, too.

Mr. HOLMES. We're just different.

Mr. STEWART. OK.

Mr. HOLMES. Do you remember what he told me in that conversation, what his version was, that night?

Mr. STEWART. I don't believe that it's my job to——

Mr. HOLMES. I understand. I just was——

Mr. STEWART [continuing]. Describe that——

Mr. HOLMES. Maybe you could jog my memory.

Mr. STEWART. That's a dangerous enterprise for me.

Mr. HOLMES. I understand.

Mr. STEWART. All right. Now at trial, do you remember saying that Judge Nixon had called you at your office from Wiley Fairchild's office that day, right before he came over to see you?

Mr. HOLMES. He called me from somewhere.

Mr. STEWART. OK. But you testified at trial that he called you from Wiley's office.

Mr. HOLMES. I assumed he was out at Wiley's.

Mr. STEWART. OK. And do you remember that——

Mr. HOLMES. I learned later he was actually out at the dentist's office that day.

Mr. STEWART. OK. But a couple hours later at the trial, you said, "Wait a second. That's not true. He didn't call me from Wiley's office." Do you remember that?

Mr. HOLMES. I don't know where he called me from. I assumed it was Wiley's.

Mr. STEWART. What happened, then, Mr. Holmes, that you remembered it one minute, and you didn't remember it the next?

Mr. HOLMES. I don't follow your question.

Mr. STEWART. You testified that he called from Wiley Fairchild's office, and then an hour later you testified that he didn't call from Wiley Fairchild's office.

Mr. HOLMES. Which testimony are you talking about now?

Mr. STEWART. This is at the trial.

Mr. HOLMES. I don't recall that line of questioning.

Senator CHAFEE. Which trial?

Mr. STEWART. Judge Nixon's trial.

Mr. HOLMES. I don't recall the line of questioning.

Mr. STEWART. OK. At page 871, you testified: "He called from Mr. Fairchild's up to the district attorney's office, said he was coming down."

The question is: "I don't recall you ever testifying about that before until this minute."

Answer: "Well, I mean it never came up before. I mean—but that's where I remember he called. As I recall, he said he was at Mr. Fairchild's."

Mr. HOLMES. OK.

Mr. STEWART. Then at page 918, about 40 pages later, you said, "Mr. Fawer let me retract on that. It was my understanding right then that when we were talking about it just now that he probably called before he came out. That would be his normal way of doing it."

Question: "No. I have a problem, Mr. Holmes."

Answer: "Okay."

Question: "I'm hopeful you're trying when you tell us things under oath, that you've either given them some thought, or if you haven't, you say to us you haven't. You said to us under oath that he called from Wiley's."

Answer: "Yes."

Question: "Remember, we went around the Horn on that."

Answer: "Let me retract. Let's just say he didn't call."

Mr. HOLMES. OK. Let's just say he didn't call, then.

Mr. STEWART. OK. Do you recollect how you had the memory one minute and didn't have the memory the next minute?

Mr. HOLMES. My memory, sitting here right now, before he came down, which would be normal, to make sure I was there—I never remember him just popping in—that he would call to make sure I was there and come down.

Mr. STEWART. Do you remember at the House hearing that you were asked if you had wanted to sweep Drew Fairchild's case under the rug when you had that conversation with Judge Nixon out at the farm—that phrase, "sweep the case under the rug"?

Mr. HOLMES. Right.

Mr. STEWART. Do you remember that you were asked that question?

Mr. HOLMES. I don't remember it specifically. Whatever I answered, that's what my answer was.

Mr. STEWART. Do you remember your first answer? It is at page 248 of the hearing. Your answer was: "I doubt seriously if I had any type thought process at that time about it."

Mr. HOLMES. Well, that would be my answer now.

Mr. STEWART. OK. Do you remember that at page 255, Mr. Keith asked the same question: "And the telephone with Wiley Fairchild in which you indicated that you would pass the case to the files, was it your intention to sweep the case under the rug, to have it simply go away?"

You answered: "Basically, sure, that was my thoughts at the time."

Which answer was right?

Mr. HOLMES. I don't know. You've got both of them there.

Mr. STEWART. You gave a third answer here yesterday. Mr. Sensenbrenner asked you if you intended to sweep the case under the rug. You said: "No, I didn't intend to when I talked to Judge Nixon, but I did intend to when I passed the case to the files."

Mr. HOLMES. At the time I passed it to the file, I thought that would be the end of it.

Mr. STEWART. Do you want to use that third answer now?

Mr. HOLMES. You can use any one you want.

The CHAIRMAN. Which is the correct—which is the truth, Mr. Holmes?

Mr. HOLMES. The truth of the matter is that at the time out at the farm when I talked to Mr. Fairchild, and I told him I would pass the thing to the file, I wasn't thinking real clear because the next day I remember I had thought about it, and I said that wasn't a very smart thing to do. My thought process was that Watkins will come on in; he will then be sentenced or we'll try; then Drew Fairchild, who had already pled guilty to a felony, would then be sentenced to probation, he'd pay his fine, and everything would go away; that it would go right on down the line like that.

Come December, at the end of the time, when Judge Weldy was getting ready to leave the bench, I had made the promise that I would pass the thing to file, and I felt like I needed to go ahead and live up to my commitment. Bill Porter had said something to me about it, so I went ahead and passed the thing to the file because I had told Mr. Fairchild I was going to.

Mr. STEWART. I have no further questions.

The CHAIRMAN. Are there any questions from the House?

REDIRECT EXAMINATION

Mr. SENSENBRENNER. Thank you, Mr. Chairman. I will be very brief.

Mr. Holmes, at the time Judge Nixon got on the phone at the farm to Wiley Fairchild, had you already told Nixon something to the effect that, "Well, I'm the district attorney; I can pass the case to the files"?

Mr. HOLMES. Yes, sir.

Mr. SENSENBRENNER. No further questions.

Your witness, Mr. Stewart.

RECROSS EXAMINATION

Mr. STEWART. One question—or, it is intended as one question. And his response was, was it not, "I'm not asking you to do anything"?

Mr. HOLMES. That's correct.

Mr. STEWART. Thank you.

The CHAIRMAN. Questions of the panel?

Mr. Danforth.

EXAMINATION BY THE COMMITTEE

The VICE CHAIRMAN. Mr. Holmes, the first article of impeachment is quite specific, and it relates to you. It says that "Judge Nixon did knowingly and contrary to his oath make a material, false or misleading statement to the grand jury. The false or misleading statement was, in substance, that Forrest County District Attorney Paul Holmes never discussed the *Drew Fairchild* case with Judge Nixon."

Now, would you please—and I know you have been talking about this yesterday and today, but would you please specifically address this statement?

Mr. HOLMES. Yes, sir. The word "discussed" has been bandied about back and forth about the exchange of conversation that I've testified to, whether or not that constituted a discussion. As I believe I told the House, a constituent might see you, come by your office, ask you about or tell you his feelings on a particular given matter; he'll go back home and he'll say, "I went by, and I saw Senator Danforth, and I discussed the bill with him."

Someone would ask Senator Danforth: "Did John Doe come by?"

"Yes, he came by and mentioned to me he had an interest in it."

Now, he would classify that discussion; you might not classify it discussion. I use the word—we "discussed" it. They are challenging the word "discussed."

Now, the only thing I can say is I can tell you what the conversation was as I recall it. If that constitutes discussion, that's discussion. That's all I can say.

The VICE CHAIRMAN. Now, Judge Nixon in his answer says as follows "Judge Nixon's only relevant conversation with Mr. Holmes concerned allegations by Wiley Fairchild that Mr. Holmes was blackmailing him, and there never was a discussion of the *Drew Fairchild* case between him and Mr. Holmes."

Will you respond to that?

Mr. HOLMES. Yes. The only time I remember anybody ever mentioning anything about blackmailing was one day when I was in his chambers after the grand jury had met—I would say on more than one occasion—and he told me that he had learned what the substance of that investigation was, and that was that I had been blackmailing Wiley or Drew Fairchild. That's the first time I had ever heard the word, "blackmailing", to my knowledge. And someone on the street told me that one of Wiley's daughters might have said that sometime later.

But no, sir, that was not—because knowing my nature, if he'd said that, then I would have done like I've done on other occasions when someone would make a wild allegation like that.

The VICE CHAIRMAN. When you were in the car going out to your farm with Judge Nixon—

Mr. HOLMES. Yes, sir.

The VICE CHAIRMAN [continuing]. As I understand it, whatever happened, whether you call it a "discussion" or not, lasted maybe two or three minutes?

Mr. HOLMES. Back and forth, yes, sir. He was very emphatic. He didn't want to go into, didn't want to know anything about any facts or anything. It was kind of like, "Wiley asked me to put in a

good word. I'm not asking you to do anything against your oath of office. You've never asked me to do anything against my oath of office. I'm not asking you to do anything. Wiley just merely asked if we weren't good friends, and I said yes, and he said, 'Well, I'd appreciate if you'd put in a good word for my boy.' "

That's when I said, "Well, hell, what does he want, an apology?"

And he said, "I'm not asking you to do anything."

And I'm sure I blared it out and told him what the nature of the case was.

The VICE CHAIRMAN. Did Judge Nixon's statement to you that he did not want you to do anything, and you had your oath of office and he had his and so forth—did you take that on face value when he said that to you, or did you take that as a very subtle way of him trying to influence your performance of your responsibilities? In other words, sometimes people can say things with winks; they can say things in very subtle ways. They can say, "Now, you understand I'm not asking you to do anything," but the innuendo, the underlying meaning of it all, is that he really wants you to do something—and you have testified that you have known this man a long time, you knew him very well. What was the meaning of that conversation?

Mr. HOLMES. I think he was just merely repeating, because I guess he had told Mr. Fairchild he would say something to me, and he was carrying out whatever agreement or whatever he had told Mr. Fairchild he would do.

Judge Nixon never wants to be obligated to anybody, so it was done—whatever the results would have been, Judge Nixon would not have wanted to say, "You did me a favor; thank you." I mean, that's just not his nature.

However, my reaction to the thing was, well, my God, I mean, a judge, you know, he said, "Well, does Wiley know his boy isn't going to jail? Do you mind if I tell him?" I mean, just a friendship right then—

The VICE CHAIRMAN. Did you take what he said as a subtle way to try to influence what you would do with the case?

Mr. HOLMES. Yes, sir. I was the aggressor in the thing. I went forward and said, well, shoot, let's pick you up some brownie points; it's no skin off my teeth.

The VICE CHAIRMAN. You were trying to pick up brownie points with the judge?

Mr. HOLMES. That's correct—well, not between the judge and me, but I was trying to, you know, "Judge, we'll get you credit for it." I don't care. I mean, if he doesn't know his boy is not going to jail, and it's already been cut four months ago we'll let you get the credit for it.

The VICE CHAIRMAN. Did you take what he said to you as asking you to do something?

Mr. HOLMES. No, sir. I don't think he asked me to do anything.

The VICE CHAIRMAN. You were volunteering to do something for him.

Mr. HOLMES. I volunteered it, yes, sir. I up and volunteered and did it, yes, sir.

The VICE CHAIRMAN. How about when he called you after he had been interrogated by the Justice Department, and he said to you,

"I never had any discussions with anybody. I never talked to anybody about it." How did you take that?

Mr. HOLMES. I took it that he had told them that at no time did he ever talk with anybody at any time about the case, and that he didn't know where they were coming from or what allegations might have been made.

The VICE CHAIRMAN. Did you say to him, "That's just not true." —

Mr. HOLMES. No, sir.

The VICE CHAIRMAN [continuing]. "You did talk to me."

Mr. HOLMES. No, sir. I didn't contradict him.

The VICE CHAIRMAN. Why didn't you?

Mr. HOLMES. I just didn't. I mean, I thought it was—to be frank, I didn't know it was the in-depth-type thing. I thought it was some type of people coming by that were just doing some kind of judicial performance, like, and was just a matter of keeping down adverse publicity.

The VICE CHAIRMAN. Well, he obviously didn't take it that way, did he? I mean, he was very upset. You've said that you've never heard him more angry than that.

Mr. HOLMES. That's correct.

The VICE CHAIRMAN. So clearly, it was a matter of great importance to him, wasn't it?

Mr. HOLMES. Yes, sir, it was —

The VICE CHAIRMAN. And he said to you, "I never talked to anybody about it. I never had any discussions with anybody."

Mr. HOLMES. That's right.

The VICE CHAIRMAN. Did you correct him when he said that?

Mr. HOLMES. No, sir.

The VICE CHAIRMAN. Did you say, "Judge, yes you did. Don't you remember you talked to me in the car?"

Mr. HOLMES. No, sir. I guess I should have, but I didn't. If that was his position on the case —

The VICE CHAIRMAN. Did it strike you that his position was wrong, that it was just a misstatement of fact at the time?

Mr. HOLMES. Yes, sir, I knew it was a misstatement of facts.

The VICE CHAIRMAN. And when you heard him say it on the television to a news reporter or read it in the paper that he had said the same thing, it struck you as a misstatement of fact.

Mr. HOLMES. As a misstatement of fact, yes, sir.

The VICE CHAIRMAN. Thank you, Mr. Chairman.

The Chairman. Senator Chafee?

Senator CHAFEE. Mr. Holmes, I'd like to ask you about your relationships with Wiley Fairchild. You and Judge McKenzie, you've testified, visited Wiley's office, but I'd like to go back to the period in early 19—let's say the visit to the farm of you and Judge Nixon was testified to be on May 14, 1982.

Mr. HOLMES. Yes, sir.

Senator CHAFEE. I'd like to examine the period prior to that. Had you ever been in Wiley Fairchild's office prior to that date?

Mr. HOLMES. Yes, sir.

Senator CHAFEE. So you knew him. Had you had occasion to call him?

Mr. HOLMES. We weren't close. I had talked with him on political campaigns and things of that nature.

Senator CHAFEE. In other words, would it be—had you picked up the phone and just called him?

Mr. HOLMES. All right, sir.

Senator CHAFEE. The answer is yes?

Mr. HOLMES. Yes. I mean, could I call him?

Senator CHAFEE. Yes. Or would it be an unusual thing for you to call him, or would it be not unusual for you to pick up the phone and call him?

Mr. HOLMES. Well, I rarely ever talked to him. I don't recall talking to him probably during my whole professional career more than, you know, a dozen times or so. But I would not have hesitated to pick up the phone and, you know, to call him. I mean, he was—

Senator CHAFEE. Now, I think, as I understand it, we're going to have testimony that Judge Nixon did not drive out to your farm on this date of May 14th. You have no question that you and he drove out to the farm together?

Mr. HOLMES. No question in my mind.

Senator CHAFEE. Now, were you living at the farm?

Mr. HOLMES. Yes.

Senator CHAFEE. Is that where you lived?

Mr. HOLMES. That's where I lived. That was my home.

Senator CHAFEE. Wouldn't it be unusual for Judge Nixon to ride out with you? He had a car, and he was going to a different place after he left your farm.

Mr. HOLMES. No, sir. We were going the same place. The people in my office were going out to a local place that I was a part owner in called "Bonnie and Clyde's," and they all left going out there. And Judge Nixon said he was going to come out there, which he did, and he said, "Well, I'll just ride with Bud out to the farm, and he'll bring me out there then." We did. We went to the farm, came back and met the people out at Bonnie and Clyde's. He stayed there. I don't know whether he had a drink or not, but I know he came there and he saw some people, and I took him there back to his car, and I assume he went on to the coast.

Senator CHAFEE. But did that all require that you take him not only from your office to your farm, from your farm back to Bonnie and Clyde's, and then leave Bonnie and Clyde's and drive him back to his car, wherever it was?

Mr. HOLMES. That's correct. That was the route.

Senator CHAFEE. Thank you.

The CHAIRMAN. Mr. Reid will inquire.

Senator REID. Thank you, Mr. Chairman.

Mr. Holmes, give me a little background on yourself. You ran for district attorney—

Mr. HOLMES. Yes, sir.

Senator REID [continuing]. In 1980, approximately?

Mr. HOLMES. 1979, actually.

Senator REID. What did you do before that?

Mr. HOLMES. I was a practicing attorney in Hattiesburg, Mississippi.

Senator REID. Did you practice any criminal law?

Mr. HOLMES. Yes, sir, Senator. If you practice down in Hattiesburg, you practice it all if you're a practicing attorney. I mean, it's general practitioner.

Senator REID. What do you do now?

Mr. HOLMES. Primarily, I have several investments, primarily in the night club, restaurant business. I took over McFadden Ventures which has a night club chain called Studebaker's.

Prior to that, Your Honor, I was involved out in Las Vegas at the Holiday Casino. I believe you sat on the Game Control Board when we were approved for license.

Senator REID. I was trying to figure out where I had seen you. That's why I was asking these questions.

Mr. HOLMES. That was where it was.

The CHAIRMAN. It was more likely at Studebaker's.

Mr. HOLMES. Pardon?

The CHAIRMAN. It was more likely at Studebaker's. [Laughter.]

Mr. HOLMES. Probably with Bob McDonald.

Senator REID. Having practiced law before I came back here, the term that we don't use in the West is "pass the case to the files." What does that mean?

Mr. HOLMES. What it literally means, when you have a case that for one reason or another you want to take it from the active file—in other words, you keep calling it up—you put it over in the inactive file. That's all it literally means. It doesn't have any actual bearing on the disposition of the case. The cases that have been held and went all the way to the United States Supreme Court, where a case passes the file, brought back out some seven, eight years later, the Supreme Court said that was fine if both parties agreed to it. It's kind of like a continuance where, in order to keep the 100-day rule being in the Federal court, both defendant and the prosecution have to agree on the continuance.

Senator REID. Can you be readmitted to the bar?

Mr. HOLMES. I don't know. That would be up to the bar.

Senator REID. But, I mean, you could apply if you wanted?

Mr. HOLMES. Yes, sir, I can apply.

Senator REID. Were you a member of any bar other than the State of Mississippi?

Mr. HOLMES. Yes—well, no. It's United States Supreme—United States courts. No other State.

Senator REID. It would appear that what was done by you—this is arguable—at the request of Judge Nixon or without the request of Judge Nixon, whatever you did doesn't appear to have been a crime.

Mr. HOLMES. It was not.

Senator REID. And, in effect, it appears to me that you and Judge Nixon were trying to ingratiate yourself with an influential rich man in your community, in effect by doing nothing for him?

Mr. HOLMES. That's tantamount to what it was, yes, sir.

Senator REID. And had you not appeared before the grand jury and had the judge not appeared before the grand jury, nothing would have happened.

Mr. HOLMES. That's my opinion.

Senator REID. Or if something happened, it would have been political in nature.

Mr. HOLMES. That's correct.

Senator REID. Did you have any alternative but to appear before the grand jury?

Mr. HOLMES. No, sir. When I called the Justice Department and asked them what it was they wanted when I got the subpoena, they said the only thing we want to do is just clear up the continuance on the *Drew Fairchild* case. I knew there had not been a crime committed. I knew that whatever mineral interests that Judge Nixon had gotten, there was no connection in the way I had handled the case up to that point, the handling or the passing of the case to the file was influenced by my telling Mr. Fairchild I would pass it to the file. But the plea bargaining, the agreement, the indictment, all these things had been done, to my knowledge, prior to Judge Nixon ever being involved, you know, with Mr. Fairchild. I understand the testimony was that he had already made these agreements in 1979 which would have been prior to even the drug bust.

But they were trying—that was what all the publicity was. They were trying to make some big just very unfair connection between them, and there just wasn't.

Senator REID. You could have, of course, taken the Fifth before the grand jury?

Mr. HOLMES. Yes, sir. I could have gone in—if I had known that I was a subject target for anything, then they wouldn't have seen my smiling face in there.

Senator REID. Because you had already decided at that time that you weren't running for reelection?

Mr. HOLMES. When we sold out of the Holiday Casino, you know—and this was in the late 1970's—it was—we made a little money, and the office of district attorney had just become full-time. And the present district attorney, John Mark Wuthers, decided to withdraw after he had been nominated for it. Some of the members of the local bar came to me, particularly a number of the black attorneys came to me, because the only person running for the office had been a former attorney for the Ku Klux Klan. And they asked me if I would run. They said I had enough money, and I could afford the four years to serve in that capacity because I think it was like 35,000 a year, what the salary was.

So I was flattered, an ego trip and whatever, and I agreed to serve, and I did and I ran and for four years. I felt like I was making a contribution. You know, for four years to the office. I told everybody at the time I ran I was not running for re-election. I acted probably improperly or—

Senator REID. What did Drew Fairchild or Wiley Fairchild benefit by your passing the case to the files?

Mr. HOLMES. Nothing.

Senator REID. I have nothing further.

The CHAIRMAN. Judge Heflin?

Senator HEFLIN. In passing the case to the file, did it require an order to be signed by the judge?

Mr. HOLMES. Yes, sir. It comes on a motion engendered from the State, and the court then has to sign an order passing to the inactive file. Then the court on its own volition can bring it back up or the State can.

In other words, when Drew Fairchild pled guilty, he then became a convicted felon. At all times, even when it was in the file or not out of the file, he was subject to being called up and sentenced to the maximum at any time.

Senator HEFLIN. The judge agreed with you as to the passing to the file, the circuit judge?

Mr. HOLMES. Yes. He signed the order, yes.

Senator HEFLIN. In regards to the conversation that you had with Judge Nixon about this, I'll ask you if this was said during that conversation; that is, at your office or his office and then out to the farm and when the telephone call was made, during that period of time. Judge Nixon to you: "I have been talking to Wiley Fairchild, and he is accusing you of blackmailing him." Did that occur at that time?

Mr. HOLMES. No, sir.

Senator HEFLIN. Did you reply to him and say, "The son of a bitch is paranoid. He said everybody is after his money. He's got so much he'll never be able to spend it. He's crazy." Did you say that at that time to—

Mr. HOLMES. No, sir. It's probably an accurate statement, but I didn't say it.

Senator HEFLIN. Did this occur: He said, "Let me tell you about the case"? That is, in other words, you said, "Let me tell you, Judge Nixon, about the case," and he replied, "Bud, I don't want to hear about the case." Did that occur at that time?

Mr. HOLMES. He told me he didn't want to hear about the case, but it didn't come from that sequence of the conversation.

Senator HEFLIN. Well, at that time, did he pass on to you the complaint of Mr. Fairchild that he was being blackmailed by Bud Holmes?

Mr. HOLMES. No, sir.

Senator HEFLIN. All right, sir. At that particular time, did he say anything at that particular time that Wiley Fairchild was saying that this matter was dragging his good name, the Fairchild name, through the mud by the news media?

Mr. HOLMES. I don't recall that statement being made, no, sir.

Senator HEFLIN. I believe that's all.

Mr. HOLMES. Senator, may I comment on one thing? I believe that if Mr. Fairchild ever accused anybody of blackmailing, I believe all that would have come out in the investigation, come out in the grand jury testimony. And to the contrary, Mr. Fairchild and son, Drew, said at no time did Bud Holmes ever ask them for any money, nor did they ever get any impression anybody was trying to get money out of them. That was their testimony at the grand jury.

The CHAIRMAN. Mr. Holmes, I don't want to prolong this and I'm still not exactly sure of the relevancy, but there's been so much discussion, let me go back to something that Senator Reid asked you. His last question was something to the effect as to whether or not Drew Fairchild benefited by your action in passing the case to the file.

Mr. HOLMES. Absolutely not. I think the—

The CHAIRMAN. All right. Now, wait a minute.

Mr. HOLMES. OK.

The CHAIRMAN. I'll let you explain, but let me ask you a couple things.

Who negotiated the plea bargaining arrangement with Drew Fairchild?

Mr. HOLMES. I did, through his attorney, Bill Porter.

The CHAIRMAN. And what was the substance of that plea bargain?

Mr. HOLMES. Same plea bargain he had——

The CHAIRMAN. What did Drew get as a result of that?

Mr. HOLMES. All right. The same plea bargain the Federal Government had previously offered him in exchange for cooperation, which was maximum time of five years' probation, maximum fine in Mississippi. At that time the maximum fine was \$5,000. He agreed to a \$15,000 in Federal court, and plead guilty to one felony count.

The CHAIRMAN. Now, if the case is passed to the files without a plea bargain——

Mr. HOLMES. All right, sir.

The CHAIRMAN [continuing]. What is the result on the accused?

Mr. HOLMES. Nothing. It just stays in limbo until somebody brings it back out.

The CHAIRMAN. There is no probation, no 5 years, no fine, no anything, is there?

Mr. HOLMES. No, sir. In Drew's case, he was a convicted felon. At the time he pled guilty and said, "I am guilty," he then became a convicted felon with all the penalties that go along with a convicted felon.

The CHAIRMAN. Now, did you—in response to my question a few moments ago, an earlier question, I thought I understood you to say that when you told—that you had forgotten, basically, that you had negotiated this thing, and you had forgotten that this plea bargain was in effect. Am I incorrect in your answer?

Mr. HOLMES. I'd appreciate if you'd jog my memory. I don't remember my answer being that.

The CHAIRMAN. On the night of the phone call, when you I mean, Wiley didn't know what was happening to his son; correct?

Mr. HOLMES. When Judge Nixon mentioned Drew's name to me, that was the first contact impliedly, suggestingly, I'd ever had from Wiley Fairchild's any interest. I thought they were totally estranged. Drew is a 55-year-old man at this time.

The CHAIRMAN. I understand that. But the point is that when you talked to—you testified that you talked to Wiley that night at the farm.

Mr. HOLMES. Right.

The CHAIRMAN. And Wiley, your testimony was, thanked you and was satisfied.

Mr. HOLMES. That's right. Appreciated it, or "Thank you," and I told him I hoped he didn't take it personal.

The CHAIRMAN. So Wiley thought his son had been helped by somebody?

Mr. HOLMES. That's correct.

The CHAIRMAN. Wiley thought that Drew Fairchild, his son, had suddenly benefited in some way——

Mr. HOLMES. That's correct.

The CHAIRMAN [continuing]. By this case being passed to the files?

Mr. HOLMES. That was the impression——

The CHAIRMAN. So Wiley obviously did not know. He thought the case was still bouncing back and forth to Federal and State court, and that's the—you probably weren't in here, but that's the testimony for this alleged blackmail. Wiley didn't know what in the world was happening. The only thing I'm asking you is what he obviously—Wiley—thought that as a result of somebody's action, his son had benefited.

Mr. HOLMES. I would think that would be the impression he would have gathered from the telephone call.

The CHAIRMAN. Further questions from the panel? Mr. Jeffords?

Senator JEFFORDS. I believe the evidence is that the guilty plea in the State courts was on January 12, 1982, some time around then.

Mr. HOLMES. All right, sir.

Senator JEFFORDS. At that time when the—was that the time the plea bargaining agreement was reached also? That was done before the plea?

Mr. HOLMES. No, sir. The plea bargain was reached prior to his signing the affidavit identifying Watkins in Dallas. We had to telex that, or they were going to turn him loose.

Senator JEFFORDS. Did that become public information at that time?

Mr. HOLMES. Yes, sir. It was on public record.

Senator JEFFORDS. So it would be fair to say that Judge Nixon was probably aware of the plea bargaining agreement at the time that you were with him in May?

Mr. HOLMES. I would doubt if he did because Judge Nixon lived on the coast, and it just wasn't that big a——

Senator JEFFORDS. So you don't know whether he was aware that there had been even a guilty plea?

Mr. HOLMES. No, sir. I doubt if Judge Nixon even knew Wiley had a son named Drew. You know, until Mr. Fairchild said something to him.

Senator JEFFORDS. When you were talking about the Fairchild situation, then, and the judge said he was putting in a good word, wanted to put a good word in for Drew, you don't know as to whether or not he knew that there had already been a plea or a plea bargaining agreement?

Mr. HOLMES. No, sir. I don't think so. And let me—Judge Nixon, "did not put in a good word". He said Wiley asked him to put in a good word. So he was very emphatic. He said, "I'm not asking you to do anything. I'm just repeating"——

Senator JEFFORDS. Well, didn't that conversation with you indicate that he was putting in a good word for Drew and implying that he was doing that at Fairchild's request?

Mr. HOLMES. Yes, sir. He let me know that Mr. Fairchild expressed an interest in his son's case, and that was when I was, you know, I guess kind of put back. And I said, "Well, what does he want? An apology? We've already got an agreement. He's not going to jail."

Senator JEFFORDS. So then you did discuss the agreement with him at that time?

Mr. HOLMES. I told him that, and that's when he said, "Well, does Wiley know that?" I said, "I don't know. I've never talked to Wiley." I thought—I was under the impression all the time that Wiley and Drew were totally estranged and had nothing to do with each other.

It just wasn't that big of a case. You know, I mean, it was—

Senator JEFFORDS. During that conversation, though, at least the judge became aware of what the plea bargaining agreement was?

Mr. HOLMES. I told him. I didn't go into detail. I just said he wasn't going to jail, and that we had already cut the deal some time back and was just waiting on him to testify.

Senator JEFFORDS. Now, the only way that the judge could influence the situation at that time would be either to change the plea bargaining agreement or to pass it to the files? Were those the options that were available?

Mr. HOLMES. No, sir. This was—you know, I guess I had the option. I could have gone, if I wanted to, quote, unquote, take care, I might have gone in there and reopened the case, let him change his plea from guilty to not guilty and then dismissed the case.

Senator JEFFORDS. Could you—

Mr. HOLMES. If I wanted to do something big for him, which I didn't do.

Senator JEFFORDS. Now, is this all under court supervision—

Mr. HOLMES. Yes.

Senator JEFFORDS [continuing]. After there's been a plea bargaining agreement?

Mr. HOLMES. Well, no—we don't—in State court, you come to an agreement. When you get ready for sentencing, you go tell the court: Your Honor, here is the agreement. Now, if the court does not go along with you, at that point the defendant has a right to withdraw his plea and proceed on to trial. If he had pled guilty relying on what the agreement—or what he could expect to get out of the case.

Senator JEFFORDS. So anything you did subsequently, other than passing it to the files, would have required the agreement of the court?

Mr. HOLMES. The court would have had to sign it. That's correct.

Senator JEFFORDS. As well as the defendant?

Mr. HOLMES. That's correct.

Senator JEFFORDS. But what could have been done then, they could have changed the fine, could have changed the sentencing?

Mr. HOLMES. That's correct. We could have—I could reduce it, no probation, no fine, reopened it; let him plead, go in there and let him plead not guilty again; let 270 days run and 270 days would have barred prosecution.

Senator JEFFORDS. Now, that's where I'm a little confused.

Mr. HOLMES. All right.

Senator JEFFORDS. Once you had passed the file, you said there's no difference. There would be a difference, certainly, if the 270 days had run and there had been no plea?

Mr. HOLMES. That's correct.

Senator JEFFORDS. Now, if there had been a plea, would there still be a bar from passing sentence?

Mr. HOLMES. No, sir. It's my understanding that—here's what the statute says, that I have a reasonable time, quote, unquote—and whatever reasonable is—to then impose sentence. That way you can't let a person come in and plead guilty and then just hold it over their head indefinitely. That's the reason Bill Porter would come in on the defendant's part and file a motion for continuances, because the continuance has to be on the part of the defendant because the defendant's rights is the ones that are being jeopardized.

The passing to the file normally occurs prior to any plea.

Senator JEFFORDS. But in this case, it occurred after the filing of the plea?

Mr. HOLMES. After the plea, yes, sir.

Senator JEFFORDS. So then, unless the sentence was actually passed within a reasonable time, it would become null and void?

Mr. HOLMES. That's correct.

Senator JEFFORDS. Under your law?

Mr. HOLMES. That's right.

Senator JEFFORDS. Thank you.

The CHAIRMAN. Senator Danforth?

The VICE CHAIRMAN. Was it your intention to return to the private practice of law after you left the prosecutor's office?

Mr. HOLMES. Yes, primarily devoted to business. You know, I had had my law practice open, but primarily doing the business that I'm doing now.

The VICE CHAIRMAN. Your intention was to go into business, but your intention was also to practice law?

Mr. HOLMES. If I ever had a law office, I'd just operate my businesses primarily out of my law office.

The VICE CHAIRMAN. Right. But it was your intention to be a practicing lawyer in the private practice of law after leaving the prosecutor's office?

Mr. HOLMES. Yes. I did return to the practice for a few months.

The CHAIRMAN. Senator Robb?

Senator ROBB. Mr. Holmes, just one brief question about the telephone conversation that took place from your home to Wiley Fairchild on the evening in question. You have stated several times what you remember as having said on that particular occasion. Would you repeat that one time for me, please?

Mr. HOLMES. All right, sir. What I said?

Senator ROBB. What you said.

Mr. HOLMES. All right, sir.

Senator ROBB. When you took the phone from Judge Nixon.

Mr. HOLMES. I took the phone from Judge Nixon. I said, "Mr. Fairchild, I hope that you didn't take my indicting Drew personal." I said, "Judge Nixon mentioned to me about your son. I was glad to do anything I could because any time this man asks me to do something, I'm glad to do it."

Senator ROBB. Now, would you just tell us what you thought—what message you thought you conveyed to Mr. Fairchild by that statement?

Mr. HOLMES. OK. Apparently, based on what I consider my conversation with Judge Nixon, Mr. Fairchild was not aware that his son already had pled guilty, his son already had received probation, and not go to jail. Apparently, he thought his son was going to jail.

It was my intention to try to give Judge Nixon the credit for my action on the thing, although it had been done, and that was wrong on my part. But that was what I did. Judge Nixon did not ask me to do it.

Senator ROBB. Did Judge Nixon respond in any way to the statement you made to Mr. Fairchild over the phone?

Mr. HOLMES. I do not recall it.

Senator ROBB. Thank you.

The CHAIRMAN. Mr. Chafee?

Senator CHAFEE. Mr. Holmes, just a clarification on this plea bargain, the pleading guilty of Drew Fairchild in January and the effect of moving it to the files, transferring it to the files. If he pleads guilty and has not been sentenced, you keep insisting he's a convicted felon.

Mr. HOLMES. Yes, sir.

Senator CHAFEE. But if he's never been sentenced—and I presume that he hadn't paid his fine by the time the case was moved to the files. Indeed, he didn't have to pay it.

Mr. HOLMES. That's correct.

Senator CHAFEE. Because it hasn't been approved by the judge.

Mr. HOLMES. The judge accepted his plea of guilty and deferred sentencing.

Senator CHAFEE. Deferred sentencing.

Mr. HOLMES. Deferred sentencing until a later date.

Senator CHAFEE. I see. So the case was moved to the files and, indeed, could have stayed there indefinitely.

Mr. HOLMES. That's correct.

Senator CHAFEE. And is it normal for judges to reach down into files when they've been moved to the files, take a case and bring it up again on its own cognizance?

Mr. HOLMES. Yes, sir, they do from time to time. I mean, as a result, passing to the file is generally when there's no way to complete the prosecution of a case. It's gotten stale, you can't bring your witnesses in. Passing to the file does not dismiss it. It merely puts it on the inactive docket.

Senator CHAFEE. Have you ever seen a case transferred to the files after there's been a plea of guilty—

Mr. HOLMES. No, sir.

Senator CHAFEE [continuing]. Outside of this one?

Mr. HOLMES. No, sir.

Senator CHAFEE. So this is a highly unusual procedure?

Mr. HOLMES. Yes. It's the first time I ever had somebody that I thought was going to come in and testify like the next week because the man was in custody and that he was on his way back from Texas to Mississippi for trial purposes, and then they let him jump bond, not once but twice. And I'm sitting here waiting. That's the first time that ever happened either.

At the time the plea bargain was, I thought we were going to trial like the next month on it.

Senator CHAFEE. Thank you.

The CHAIRMAN. Mr. Mack.

Senator MACK. Thank you.

Mr. Holmes, you testified many times that your statement, "When this man asks me to do something, I do it," or something like that.

Mr. HOLMES. Yes.

Senator MACK. "When this man asks me to do something"—is "I do it"?

Mr. HOLMES. Yes. I was just trying to give Judge Nixon the credit. I was trying to make him look like a hero.

Senator MACK. Was there something that Judge Nixon asked—

Mr. HOLMES. No, sir. Judge Nixon did not ask me to do anything. I was just—that was me and that's what I did. That's what I said. He did not ask me to do anything.

Senator MACK. In this phone conversation with Mr. Fairchild—

Mr. HOLMES. Yes.

Senator MACK [continuing]. He testified yesterday that it was normal for him to have six drinks each evening.

Mr. HOLMES. That's my understanding.

Senator MACK. Was there enough conversation for you to be able to draw any conclusions about his condition that evening when you talked to him?

Mr. HOLMES. No, sir. Like I said, I had two or three myself. So I guess you have one drunk talking to another drunk, you know.

Senator MACK. Thank you.

The CHAIRMAN. Mr. Jeffords.

Senator JEFFORDS. To clear up a couple more points here, you indicated that there was general knowledge of the plea bargaining agreement that had been well known after it had been made in January of that year. And yet you have later, as I've seen, indicated that Wiley did not know this, and that somehow the judge was going to get Brownie points for having—getting credit for Drew not going to jail. Can you explain that to me?

Mr. HOLMES. Yes, sir.

Senator JEFFORDS. Wiley must have known about it, must he not?

Mr. HOLMES. That was the reason I reacted when I said, "What does he want? An apology?" I assumed Wiley knew it. That's when the judge said, "Well, does Wiley know his son isn't going to jail?" I said, "I do not know. I've never talked to Wiley about it." You know, Wiley never said a word to me, and I was just of the impression, I guess, that Drew and Wiley were so estranged, which that was my impression because he was a former marriage and so forth, and that he and Wiley just weren't communicating. I didn't know. I mean, I'd never had an occasion to inquire into it.

Senator JEFFORDS. Later, I think you've said today that you felt you had to pass the case because otherwise you wouldn't be sort of living up to an understanding that Wiley had. Now, I'm confused. When did Wiley become aware that you intended to pass the file? Was it in that conversation that night when you and the judge were on the phone?

Mr. HOLMES. That was the only conversation I had with Mr. Fairchild, was that night. I told him that's what I was going to do. The next day, when I thought about it, or the next day or two or three days after that, I said, well, Watkins will be on in here, we'll go ahead and have the trial, Drew then will be sentenced, proba-

tion, he'll pay his fine like we'd agreed on. He doesn't go to jail. Nothing else will be said about it.

But now it draws on. Here it is. Judge Weldy leaving office. Judge McKenzie's coming in. Bill Porter's saying something about it. I told Mr. Fairchild. I said, "Well, I'd just better go ahead and put this thing away because I told Mr. Fairchild I was going to do it."

Senator JEFFORDS. Thank you.

The CHAIRMAN. Mr. Wirth.

Senator WIRTH. Why did you want to make Judge Nixon look like a hero?

Mr. HOLMES. Just like, Senator Wirth, if you had asked me if there's some person going to school at the university, and your office had called me, and we'd already made—I'd told the family or something, well, Senator Wirth's inquiring, an interest in this case, would have a bearing on it, and you need to go thank him. That was a common practice I did with every—

Senator WIRTH. If it's a friend of yours, then you wanted to make him look good.

Mr. HOLMES. Just always did, yes, sir. I always try to give—attorneys, I'd always say, you know, this attorney did you such a super job and whatever. But I'd always try to do that with whomever, just to—I thought it—I just always did.

Senator WIRTH. How big is Hattiesburg?

Mr. HOLMES. Probably about the general metropolitan area, totally maybe 40,000, 45,000. Maybe. I don't know. You hear different counts because you've got Lamar County, which I wasn't over, and a big part of the population of Hattiesburg is over Lamar County. But my district didn't include that.

Senator WIRTH. Thank you, Mr. Chairman.

The CHAIRMAN. Any more questions from counsel for this witness?

Mr. BARON. No, Mr. Chairman.

Mr. STEWART. I have nothing, Mr. Chairman.

The CHAIRMAN. Can we excuse Mr. Holmes?

Mr. BARON. He may be excused, as far as the House is concerned.

Mr. STEWART. Yes, sir.

The CHAIRMAN. Mr. Holmes, you are excused. Thank you for your testimony.

Mr. HOLMES. Thank you.

[Witness excused.]

The CHAIRMAN. How many more witnesses does the House have for its case?

Mr. BARON. Mr. Chairman, the House has one more live witness. There is some additional evidence to go in, but only one more witness.

The CHAIRMAN. And what estimate do you have for time for the direct examination, approximately?

Mr. CARDIN. Approximately 45 minutes.

The CHAIRMAN. Thank you, Mr. Cardin.

Mr. STEWART, do you have any way of estimating for me how long your cross-examination will take?

Mr. STEWART. I didn't think it would take that long, by any means. I may be surprised.

The CHAIRMAN. If we break now and take Mr. Ingram next, would anybody be inconvenienced if we come back, try to come back and begin at 1:30? I certainly want to conclude the House's case in toto today and any evidentiary, just wrap it all up, so we can begin with the defense on Tuesday morning. Can we do that at 1:30? Certainly, I thank the panel for their promptness, but I really need you on a Friday afternoon to finish this.

[No response.]

If we are in agreement, we will meet at 1:30.

[Whereupon, at 11:43 a.m., the committee was in recess, to reconvene at 1:30 p.m., the same day.]

AFTERNOON SESSION

The CHAIRMAN. The committee will come to order.

I forgot to announce that Senator Murkowski, a member of the panel, has been necessarily absent because of illness.

Mr. Edwards—excuse me, Mr. Cardin.

Mr. CARDIN. The House calls Mr. Ingram to the stand.

The CHAIRMAN. Mr. Ingram, would you raise your right hand?

Do you, Carroll Ingram, swear and affirm that the evidence you shall give in the case now pending between the United States and Judge Walter L. Nixon, Jr., shall be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. INGRAM. I do.

The CHAIRMAN. Welcome, and have a seat.

TESTIMONY OF CARROLL INGRAM

DIRECT EXAMINATION

The CHAIRMAN. Proceed, Mr. Cardin.

Mr. CARDIN. Thank you.

Mr. Ingram, would you please describe briefly your education?

Mr. INGRAM. Well, I graduated from the University of Southern Mississippi in 1964, a product of the Covington County—

The VICE CHAIRMAN. Could you speak into the microphone, please, and fairly close to it?

Mr. INGRAM. All right, sir.

I'm a product of the Covington County Public School System, in Seminary, Mississippi. I graduated from the University of Southern Mississippi in 1964, and graduated from the University of Mississippi Law School in 1967.

Mr. CARDIN. Are you currently a practicing attorney?

Mr. INGRAM. I am.

Mr. CARDIN. How long have you practiced law?

Mr. INGRAM. Twenty-two years.

Mr. CARDIN. What type of practice do you have?

Mr. INGRAM. I have a general law practice. We have a law firm with offices in Hattiesburg and Gulfport.

Mr. CARDIN. In addition to being a lawyer, have you ever served in public office?

Mr. INGRAM. I have. I served in the Mississippi Senate from 1972 to 1980.

Mr. CARDIN. During your service in the Senate, did you hold any positions in the Senate?

Mr. INGRAM. I did. I chaired the Judiciary, which is one of the three significant committees in the Senate, and I served on Finance, on Banks and Banking, Natural Resources, a couple of other committees, Interstate and Federal Cooperation, I chaired that committee my freshman term.

Mr. CARDIN. During your practice of law, have you ever appeared before Judge Nixon?

Mr. INGRAM. I have.

Mr. CARDIN. And how often did you appear before him?

Mr. INGRAM. Well, during my practice of law, from the very beginning of my practice of law, of course, that's how I met Judge Nixon, was in the practice in his court, and I would say on an average of two or three times a year.

Mr. CARDIN. Describe your relationship for the committee with Judge Nixon.

Mr. INGRAM. Well, I've known Judge Nixon, as I said, since beginning my law practice in 1967. He is our judge for the United States District of the southern district. We have a division of that court in Hattiesburg, Mississippi, and so I met him during that tenure. Of course, when I was elected to the Senate, I had occasions to visit with Judge Nixon in Jackson from time to time, as I served there. So, over the years, the relationship has developed, one out of mutual respect for each other and it developed down through the years.

Mr. CARDIN. Have you ever faced disciplinary action as an attorney?

Mr. INGRAM. I have not.

Mr. CARDIN. You have testified at length in proceedings involving Judge Nixon, is that correct?

Mr. INGRAM. That's correct.

Mr. CARDIN. You testified before the grand jury?

Mr. INGRAM. I did.

Mr. CARDIN. You testified during Judge Nixon's criminal trial?

Mr. INGRAM. I did.

Mr. CARDIN. You testified during the House impeachment proceedings?

Mr. INGRAM. I did.

Mr. CARDIN. During the trial in the House impeachment testimony, you were extensively cross-examined by Judge Nixon's attorneys, is that correct?

Mr. INGRAM. Certainly, yes.

Mr. CARDIN. Was your prior testimony truthful, to the best of your ability?

Mr. INGRAM. It is.

Mr. CARDIN. Are you aware of anything that you may have said during the prior trial or House testimony that was inaccurate or mistaken?

Mr. INGRAM. Not that I am aware of, no.

Mr. CARDIN. Mr. Ingram, I ask these questions, because the Senate has admitted into evidence your prior sworn testimony before the House and at Judge Nixon's trial. It's my hope that I can limit our testimony and questions today to some of the impor-

tant aspects of your testimony, without going through the entire matter. In the event I do not cover a point that was the subject of your prior testimony, may the Senate rely on your prior testimony?

Mr. INGRAM. Sure.

Mr. CARDIN. Let me now, if I might, turn to Mr. Wiley Fairchild. Could you describe for the committee your relationship with Wiley Fairchild?

Mr. INGRAM. Mr. Fairchild is a relative of mine, he is a second cousin. He is a person that I have represented, along with his business interests and entities down through the years, until some 3 or 4 years ago, maybe—yes, 3 or 4 years ago.

Mr. CARDIN. So, you are related, and had a professional relationship with him as an attorney?

Mr. INGRAM. Yes.

Mr. CARDIN. Is Mr. Fairchild a wealthy individual?

Mr. INGRAM. He is.

Mr. CARDIN. When did you first learn that Judge Nixon was interested in making an oil investment with Mr. Fairchild?

Mr. INGRAM. I believe that it was sometime in late 1979 or early 1980.

Mr. CARDIN. To your knowledge, was Judge Nixon aware at that time that Mr. Fairchild was a client of yours and also your relative?

Mr. INGRAM. I believe he was.

Mr. CARDIN. Whose idea was it to have an investment?

Mr. INGRAM. As I've testified before, it was Judge Nixon's idea.

Mr. CARDIN. Did you mention Mr. Fairchild's name first, or did Judge Nixon mention it first?

Mr. STEWART. Mr. Chairman, we're going back through all of this stuff again. I thought we were going to try to skip that. The Chair has had a heavy hand on me through these proceedings; I think it's fair to have it on both sides.

The CHAIRMAN. Well, I don't think anybody has got any room to complain. We had a searching examination this morning, Mr. Stewart, on an incredible range of the thing. I think he's got a right to lay the foundation for what Mr. Ingram knows about business relationships which you've explored in detail also.

Continue, Mr. Cardin.

Mr. CARDIN. Mr. Ingram, the question was who mentioned Mr. Fairchild's name first?

Mr. INGRAM. As I stated, Judge Nixon did.

Mr. CARDIN. Do you recall what Judge Nixon said to you the first time that you met in regards to this transaction?

Mr. INGRAM. Well, as I recall, it was a visit that we were having in Jackson and we had a discussion relative to some of his investments, and he requested of me if I thought that there would be an opportunity for him to invest in oil properties with Mr. Fairchild.

Mr. CARDIN. And what was your reaction to the request?

Mr. INGRAM. My reaction to that request was that perhaps he would, and that an inquiry could be made.

Mr. CARDIN. Did you then contact Mr. Fairchild immediately?

Mr. INGRAM. I did at some later time, yes.

Mr. CARDIN. Was there a period of time that elapsed between the—

Mr. INGRAM. Yes, there was.

Mr. CARDIN. Why did you not just immediately go?

Mr. INGRAM. Well, as I think I've testified to before, that was not something that was convenient for me to do and I just procrastinated to some extent about making that request, but I finally did make that request.

Mr. CARDIN. During the period of time between the first conversation with Judge Nixon and the time that you talked to Mr. Fairchild, did you get further contacts from Judge Nixon concerning the investment?

Mr. INGRAM. Yes, I believe there were at some time after that, in conversation, an inquiry by him as to whether or not I had had an opportunity to visit with Mr. Fairchild or not.

Mr. CARDIN. Was there just one phone call, or was there a series?

Mr. INGRAM. No, I think there was more than one phone call, but I don't know how many there was.

The CHAIRMAN. Mr. Cardin, do your best, rather than take a step-by-step through phone calls, if he knows whether or not they actually did any business together, if we can get into that and just get that business part over with.

Mr. CARDIN. Did you contact Mr. Fairchild?

Mr. INGRAM. I did.

Mr. CARDIN. When did that occur?

Mr. INGRAM. I believe it occurred sometime in early 1980.

Mr. CARDIN. And what was Mr. Fairchild's reaction?

Mr. INGRAM. His reaction was that he was certainly agreeable to that and that he would look for an opportunity that would be appropriate for an investment.

Mr. CARDIN. And did you notify Judge Nixon of Mr. Fairchild's response?

Mr. INGRAM. I did.

Mr. CARDIN. And what was Judge Nixon's response?

Mr. INGRAM. His response was that he was pleased about it, not any particular response about it, other than he was pleased about it.

Mr. CARDIN. Could you describe very briefly, after these conversations, what your relationship was to the deeds being prepared and the transaction consummated?

Mr. INGRAM. Well, some period of time, some long period of time elapsed from that time, Mr. Fairchild called me and gave me the general description of three different properties that he thought were available for an investment for Judge Nixon. I made a note of that, told Judge Nixon about the three properties, and then some long period of time after that, the deeds were prepared by Mr. Fairchild's office and delivered to my office.

Mr. CARDIN. Now, the deeds that were prepared, I would ask if you could turn to the House exhibit—that is the black book—House exhibit 4, and ask if they are the deeds that were originally sent to your office from Mr. Fairchild's office?

Mr. INGRAM. Yes, I think so.

Mr. CARDIN. And what did you do when you received these deeds?

Mr. INGRAM. When I received the deeds, I transmitted them to Judge Nixon.

Mr. CARDIN. Did there come a time that there was a second set of documents that were delivered to your office?

Mr. INGRAM. Yes. When the deeds came to my office, I noted that there was an error in acreage. I called Mr. Fairchild and pointed the error out to him and sent the deeds back to his office for correction, and I believe at that time that the original set of instruments which he sent to my office were corrected by his office.

Mr. CARDIN. Now, you say corrected. What errors did you notice in the original deeds?

Mr. INGRAM. The primary error that I noticed was acreage was incorrect. The original deeds had 1 acre each in the deeds.

The CHAIRMAN. Mr. Cardin, I really believe it's unnecessary to go through the deeds. Just establish the fact of whether or not if the witness knows whether or not Judge Nixon and Mr. Fairchild did business together, were business partners, and let's go on.

Mr. CARDIN. Mr. Chairman, if I might, just one more questions in this area.

After the deeds were signed, I take it—if I might just have him acknowledge that exhibit 5 was the second deeds that were prepared. They have a different date. Did you receive them later?

Mr. INGRAM. Yes, I believe these are copies of the instruments.

Mr. CARDIN. The corrected deeds.

Mr. INGRAM. Yes.

Mr. CARDIN. Now, exhibit 6 represents the promissory note that was—

Mr. INGRAM. Yes, it appears it does.

Mr. CARDIN. Now—

The CHAIRMAN. Mr. Cardin, again, I simply remind you that, as I tried to do earlier on all parties, that the articles of impeachment do not charge any impropriety in these business dealings. I know that it is tangential of this case, as we have explored it in detail, but if we can try to move through this in a hurry.

Mr. CARDIN. Could you describe for us your knowledge of Drew Fairchild?

Mr. INGRAM. Well, Drew Fairchild is the son of Mr. Wiley Fairchild. He probably is in his late fifties now. He was involved in a drug case some time ago—I don't know how much description of him you want me to give. He is probably 58 years old, lived away from Hattiesburg for a good while, had an estranged relationship with his father, a tumultuous relationship with his father down through the years. I don't know how far you want me to go.

Mr. CARDIN. Well, let me ask you a question. When did you first learn that he had been implicated in a marijuana smuggling effort?

Mr. INGRAM. Sometime in the fall, I believe, of 1980. It was after he had negotiated, he and his counsel had negotiated a plea bargain arrangement with the Federal authorities relative to a drug case.

Mr. CARDIN. And what was your knowledge and involvement in the *Drew Fairchild* case?

Mr. INGRAM. Well, he called my office and asked to visit with me concerning his case and I called his lawyer because in the conversation I learned that he had legal counsel, and I called his lawyer and gained permission to visit with him and I did.

He came in and reviewed with me and I think one of the other lawyers in the firm the plea bargain arrangement which he had made with the Federal officials. It appeared to me that the plea bargain arrangement was a satisfactory arrangement, one that he should consider accepting or entering into, and I so advised him of that.

Mr. CARDIN. Did you ever speak to Mr. Holmes about the case?

Mr. INGRAM. I don't know, in terms of speaking to Mr. Holmes about the case. I'm quite sure that, in the contact that I had with Mr. Holmes, since he was the district attorney, that yes, I did speak to him about the case, but I did not speak to Mr. Holmes on behalf of Mr. Fairchild or in a representative capacity of that.

Mr. CARDIN. Were you aware that Drew had reached a written understanding in November 1980 with the U.S. Attorneys Office in Jackson, whereby he would plead guilty and cooperate, in return for probation and final—

Mr. INGRAM. That's when he came—that's the first knowledge I had about the case.

Mr. CARDIN. Did you subsequently become aware that the U.S. Attorneys Office was not satisfied with his cooperation?

Mr. INGRAM. Yes, I did, and that was in a general sense, not in a specific sense. I don't know exactly how I learned that, but I was aware, sometime after that, that that was the case.

Mr. CARDIN. Did you then become aware that he was indicted by the Forrest County Grand Jury?

Mr. INGRAM. I was aware of that, yes.

Mr. CARDIN. And that Drew Fairchild's lawyer, Bill Porter, reached an oral agreement calling for a guilty plea and cooperation in return for probation and a fine on the State charges?

Mr. INGRAM. It was my understanding that there was an agreement similar to that entered into by the Federal authorities.

Mr. CARDIN. Then, in December 1982, the case was passed to the file?

Mr. INGRAM. That's correct.

Mr. CARDIN. Would you describe very briefly your understanding of what it means to pass a case to the files?

Mr. INGRAM. That the case is simply placed in an inactive status and, for the most part—and down through the years, maybe it's just a practice in our local courts—for the most part, that ended the case, unless there was something very unusual that reactivated the case. And really and truly, up until this time of this particular case, I'm not sure that I ever recall one being reactivated. Usually, passing it to the files was a step in resolving the case, in the final analysis, even though I am aware that legally and technically that did not finally and forever dismiss the case.

Mr. CARDIN. In Drew Fairchild's case, passing it to the files, was it your understanding that he would not then suffer any penalty for his plea?

Mr. INGRAM. I assumed that that resolved the case.

Mr. CARDIN. When the case was passed to the files, was that a more favorable treatment than the arrangement that he had worked out on his plea bargain?

Mr. INGRAM. Well, I would have to go back and really determine what the arrangements was that he had under the plea bargain,

but when it was passed to the files, it would simply mean that the case was not going to be prosecuted further by the State court, and so he would suffer no consequences, I'm assuming, by that.

Mr. CARDIN. Now, can you associate the passing of the case to the file in the Drew Fairchild matter with conversations you had with Wiley Fairchild and Judge Nixon concerning Judge Nixon's involvement in Drew's case?

Mr. INGRAM. Yes, I can. In the latter part of 1982, I had a telephone conversation with Mr. Fairchild in which he related to me——

Mr. STEWART. Objection, Your Honor. Mr. Chairman, I just want to raise an issue here that Mr. Ingram's about to get into hearsay. This is about a phone conversation he had with Mr. Fairchild, he's going to describe what Mr. Fairchild said, and Mr. Fairchild——

The CHAIRMAN. I will sustain that. I don't think that is necessary.

Mr. CARDIN. If I could just raise the point to the committee, what I would like to have Mr. Ingram testify to would be what Mr. Fairchild told him, which I think would corroborate testimony as it relates to what Mr. Ingram knows about Judge Nixon's involvement in the *Drew Fairchild* case.

Mr. STEWART. Your Honor, that's classic hearsay.

The CHAIRMAN. I'm not so worried about hearsay. It's just the fact that—we've got a lot of hearsay in this, as all the lawyers know. The question is just how necessary afield we have to go to establish issues for the Senate's determination concerning the articles of impeachment, and I just—I think, Mr. Cardin, it would be a lot easier, we will give you another chance on redirect, if you feel like some essential matter has been left out that the Senate needs for its determination, but right now I just wish you would go to the issues or whether or not he knows anything about these discussions, alleged discussions, whether he was a part of them, which is the central issue in this case. You will have another chance after cross-examination, if you feel that there is some other area that is relevant and necessary to the determination, to bring it back up.

Mr. CARDIN. Mr. Ingram, as a result of your conversation with Mr. Fairchild, what was your impression of what Mr. Fairchild expected Judge Nixon to do in regards to the *Drew Fairchild* case?

Mr. STEWART. The same objection. There's also no foundation for it.

The CHAIRMAN. Well, he can testify to what his impression is, just like everybody else testified. That is what Mr. Holmes did all morning, his impressions on both sides.

Answer the question.

Mr. INGRAM. My impressions were, from that telephone conversation with Mr. Fairchild, that Judge Nixon would speak to Mr. Holmes about Drew Fairchild's case, and that Judge Nixon did that.

Mr. CARDIN. Did you have any impression as to whether that conversation had any good as far as Mr. Fairchild was concerned with the case?

Mr. INGRAM. My impression was that Mr. Fairchild was pleased about that situation.

Mr. CARDIN. Did you have any sense as to whether the plea bargain would be honored as a result of that conversation?

Mr. INGRAM. I don't know that that conversation resulted in that much detail, but I would say yes, because Mr. Fairchild seemed to be pleased about it and that seemed to be what he wished to have occur.

Mr. CARDIN. As a result of that conversation, did you have the impression that Judge Nixon would be helpful in regards to Drew Fairchild's case?

Mr. INGRAM. Yes.

Mr. CARDIN. Did that conversation take place before or after the case was passed to the file?

Mr. INGRAM. Before.

Mr. CARDIN. Now, did you talk with Judge Nixon with regard to any conversation he had with regard to the *Drew Fairchild* case?

Mr. INGRAM. I had a telephone conversation with Judge Nixon, wherein he related to me in an implied or understated manner that he had talked to Bud Holmes about this case, yes.

Mr. CARDIN. Could you tell the committee when that conversation took place, to the best of your recollection?

Mr. INGRAM. I had a sense that it took place after the Fairchild telephone conversation took place. I believe it did take place after that, some period of time after that.

Mr. CARDIN. Was it a relatively short period of time after that or a long period of time?

Mr. INGRAM. I would think within a few weeks after that.

Mr. CARDIN. And could you tell us whether the Judge indicated that he had been helpful or not in regards to the *Drew Fairchild* case?

Mr. INGRAM. I think that the Judge indicated to me that he had done as Mr. Fairchild had requested him to do, and that was to speak to Mr. Holmes about the case.

Mr. CARDIN. Did Judge Nixon relate to you what Wiley Fairchild's concerns were in regards to his son's case?

Mr. INGRAM. No, not in any detail, he did not.

Mr. CARDIN. Did Judge Nixon indicate to you that Wiley Fairchild had asked him to help in regards to his son's case?

Mr. INGRAM. Yes.

Mr. CARDIN. And from your conversation with Judge Nixon, did you believe that the matter had been resolved from that conversation?

Mr. INGRAM. I believed that the matter—I don't know whether or not I could say that the matter had been resolved, but that Judge Nixon had spoken to Mr. Holmes as he had been requested to do by Mr. Fairchild, and there was a positive feeling about that, there was a positive reaction about that. I don't want to say that Judge Nixon said the case is going to be resolved, because he didn't say that.

Mr. CARDIN. But did he indicate that he had put a good word in for Wiley Fairchild?

Mr. INGRAM. I don't know whether he used those words or not, but the sense was that he had spoken to Mr. Holmes about the matter and that he was pleased about that conversation.

Mr. CARDIN. Did you see the passing of the case to the file as the results of the impressions you received from the conversations?

Mr. INGRAM. No, I did not, not at that time, because at that time the conversation with Judge Nixon was very understated, it was simply a relating of very little information to me, and the truth about it is that, when I finished talking with Judge Nixon, I could not have really substantively told you all of the facts that were related to me, because it was an understated passing of information and I didn't relate those conversations to anything about passing the case to the files until well down into this investigation, as I looked back on the situation and began to try to make judgments about what occurred, and then certainly I could relate that to that time and that act.

Mr. CARDIN. At the time of your conversation with Judge Nixon about Drew's case, did Judge Nixon express any interest in further investments with Mr. Fairchild?

Mr. INGRAM. Certainly. After the first investment had been accomplished, Judge Nixon was very pleased with that investment, and insofar as I know, Mr. Fairchild was, and certainly Judge Nixon was interested in making other investments with Mr. Fairchild.

Mr. CARDIN. At the time you had the conversation—

The CHAIRMAN. How do you know that?

Mr. INGRAM. Well, because I had occasional telephone calls with Judge—conferences with Judge Nixon, I visited with him occasionally in person with him, and that would be related to me, it would be stated to me.

Mr. CARDIN. During the conversation you had with Judge Nixon about the *Fairchild* case, did he mention to you that he was interested in other investments?

Mr. INGRAM. During that period of time he did. Yes.

Mr. CARDIN. Why do you think Judge Nixon told you that he had talked to Mr. Holmes about the *Drew Fairchild* case?

Mr. INGRAM. Well, I think that Judge Nixon wanted me to know that, because he knew of my relationship with Mr. Fairchild, and he knew that Mr. Fairchild would be pleased about that, and I suspect that he assumed that I would transmit that to Mr. Fairchild, that I would make the statement to Mr. Fairchild, that he had done so.

Mr. STEWART. Your Honor, I certainly don't question the integrity of the answer, but I mean, he's speculating as to the mental impressions of another person. This is not appropriate testimony and I object to it, and move to strike it.

The CHAIRMAN. Well, let's strike it. He is speculating on someone else's knowledge and he doesn't have that knowledge. It's also not necessary. Let's strike it.

Mr. CARDIN. Let me move on to another aspect, if I might. Did Judge Nixon contact you one evening in April 1984, after he had been interviewed by the FBI?

Mr. INGRAM. He did.

Mr. CARDIN. And could you describe that conversation.

Mr. INGRAM. He called me at my house, and he was very concerned. I would say upset, because he had been interviewed that day, I believe by the FBI, relative to the transaction which we have

just described, and he wanted to know what was happening, what was going on, and so he called me at my home.

He had called me earlier in the day at my office, but I was not in my office. I learned that because the next day, when I got to my office I had a phone message from him during the day.

Mr. CARDIN. During that conversation, did he express to you concern that the call might be recorded?

Mr. INGRAM. Yes. He did, from the sense of saying to me that even if this telephone call is recorded, I have a right to talk to you and I want to know what's going on. What information do you have about what is happening here? And of course that's the first knowledge I had about an interview, or an investigation, or anything of that nature.

Mr. CARDIN. Now you voluntarily testified before the grand jury in July 1984?

Mr. INGRAM. I did.

Mr. CARDIN. After your grand jury appearance, did Bud Holmes come to see you?

Mr. INGRAM. He did.

Mr. CARDIN. Did he inquire concerning a telephone call?

Mr. INGRAM. He did.

Mr. CARDIN. Could you tell us what he said.

Mr. INGRAM. Well, he came to my office and talked to me about the grand jury appearance, and asked me if I had been questioned in my grand jury testimony about a certain telephone call that occurred between Judge Nixon and himself and Mr. Fairchild one night, and I told him, no, I had not been questioned about that event.

Mr. CARDIN. Now was this your first knowledge of this so-called conversation?

Mr. INGRAM. Yes.

Mr. CARDIN. You have testified before as to conversations you had with both Mr. Fairchild and Judge Nixon.

Mr. INGRAM. Yes, but I want to say here, I didn't know then, and I don't know now, that those conversations that I had with either one, or both of them, had anything to do with that particular phone call.

Mr. CARDIN. Now did Mr. Holmes express some concern about whether Mr. Fairchild had taped his conversation?

Mr. INGRAM. Yes. He asked me that question—did I think that Mr. Fairchild may have taped that telephone call. I told him I had no reason to believe he did or he didn't. My assumption was that he did not.

Mr. CARDIN. Now did there come a time when your employees were subpoenaed to appear before the grand jury?

Mr. INGRAM. Yes. I believe January 1985.

Mr. CARDIN. And that you voluntarily provided information to the Government later concerning Judge Nixon's involvement in Drew's case, once you knew the importance of this particular conversation?

Mr. INGRAM. The whole posture that I had in this investigation from the very beginning, when I was first asked about this issue, was that whatever information I had, it would be provided, and I

had been doing that simply at the request of the Justice Department, whenever they wanted to do that.

I had gone before the grand jury in that posture, and then, suddenly, without any notice, or anything of that nature, then employees or staff members, and former staff members of my office were subpoenaed, and I went to the Justice Department to find out what the situation was. Yes.

Mr. CARDIN. Were you ever given immunity by the Department of Justice?

Mr. INGRAM. Absolutely not. There was not any cause for me to have immunity.

Mr. CARDIN. Did the Government ever promise you anything, or threaten you in any way in an effort to get you to change your testimony?

Mr. INGRAM. No.

Mr. CARDIN. Mr. Ingram, I'm going to ask you a few questions, just to try to summarize, and that is, based on your conversations with Judge Nixon and Wiley Fairchild, is it your understanding that Judge Nixon knew Drew Fairchild existed from the judge's conversation with Fairchild and Holmes?

Mr. STEWART. Objection. We're calling for conclusions and for mental impressions about the knowledge of another person.

Mr. CARDIN. Mr. Chairman, I've completed the direct examination.

The CHAIRMAN. Your witness, Mr. Stewart.

CROSS EXAMINATION

Mr. STEWART. Good afternoon, Mr. Ingram. I just want to nail down a couple things right off the bat. You have no firsthand knowledge of any phone call from Bud Holmes' farm to Mr. Wiley Fairchild?

Mr. INGRAM. I only have information about that phone call from Mr. Holmes.

Mr. STEWART. OK. You weren't at Bud Holmes' farm when the call was made?

Mr. INGRAM. Absolutely not.

Mr. STEWART. You weren't in Wiley Fairchild's house when it was received?

Mr. INGRAM. Absolutely not.

Mr. STEWART. So all you know about it is what you heard from Mr. Holmes?

Mr. INGRAM. What Mr. Holmes told me about the phone call is what I know.

Mr. STEWART. I wanted to quickly ask you about that exchange that you had on the phone with Judge Nixon. The one you said that you weren't exactly quite sure what he was referring to. Something about Drew's case and Wiley had asked him to do something?

Mr. INGRAM. I don't think I said that I wasn't sure about what he was referring to. I said that his conversation with me was information, that it was understated and implied, and I didn't come away with a great deal of particular information about the situation.

Mr. STEWART. Do you remember testifying in the House, that you weren't even sure what he was saying at the time?

Mr. INGRAM. No. I don't remember testifying in the House that I wasn't sure about what he was saying. I think that—and you can get my House testimony out, if you need to.

Mr. STEWART. That's all right.

Mr. INGRAM. I think that when you look at the—I re-read it last night, to be sure. I don't often go back and re-read it, unless it's necessary. But I did last night. And I think that if you take my testimony about that telephone call, and you read it in its entirety, you get a real good sense of what is there.

And so to say that my testimony in the House said that I didn't know what was said in that phone conversation is unfair, and it's not correct, to summarize it and make that conclusion. So I'm saying to you, that if you take the testimony in its entirety in the House, that you get a—I think you get a real good sense of what's there.

Mr. STEWART. But you've always insisted that your exchange with Judge Nixon on that phone call was not a discussion of Drew's case, isn't that right?

Mr. INGRAM. It's exactly right. It was not.

Mr. STEWART. OK. Now, after the investigation started, Bud Holmes asked you about that phone call on three separate occasions. Do you recall? That I'm aware of. Now you talked about one of them just in your direct examination here, which was after your first testimony in July, he came by and asked you about the taping?

Mr. INGRAM. I believe that's correct. I think that he came by and asked me about that telephone call after my first grand jury testimony. I believe that's correct.

Mr. STEWART. And he gave you no indication that he was asking on behalf of anyone else?

Mr. INGRAM. No. He did not.

Mr. STEWART. And then in February 1985—that's about 6 months later and you're about to go back to the grand jury for a second time—did you talk to Mr. Holmes again about the phone call?

Mr. INGRAM. I did.

Mr. STEWART. Now he came to see you again about the phone call, didn't he?

Mr. INGRAM. He did.

Mr. STEWART. All right.

Mr. INGRAM. And that was the first time that I said to him that I have had a conversation with the Justice Department about that phone call.

Mr. STEWART. OK. Did Mr. Holmes appear anxious when you spoke with him?

Mr. INGRAM. Yes.

Mr. STEWART. And what was his response to you, when you said you'd described the phone call?

Mr. INGRAM. His response to me was that that's a problem.

Mr. STEWART. OK.

Mr. INGRAM. Created a problem for him, because I'm assuming he had testified contrary to that.

Mr. STEWART. Now did he come back and see you another time?

Mr. INGRAM. He did, in a few days, and I would have to refer to my previous testimony to get the accurate dates about that, but he came back to me a few days after that, in February 1985.

Mr. STEWART. And didn't he then suggest to you that maybe you were misremembering the phone call?

Mr. INGRAM. He did.

Mr. STEWART. And you really understood that he was trying to pressure you to change your testimony?

Mr. INGRAM. I don't think that I've ever said that, and I don't wish to characterize it in that regard. I certainly think that he would prefer and would desire that my testimony have been different, and that I would remember it a different way, but there wasn't any question about—I told him that that wasn't his statement about how the telephone call occurred, was not my recollection of what he had told me, and that I wasn't changing that—that recollection of it.

Mr. STEWART. And he was giving you every opportunity to change it, isn't that right?

Mr. INGRAM. Well, he came to my office for a conversation about the telephone call.

Mr. STEWART. A second conversation?

Mr. INGRAM. Yes.

Mr. STEWART. OK. Now you reported that approach from Mr. Holmes to the Government, didn't you?

Mr. INGRAM. I told the Government that Mr. Holmes and I had had that second conversation. Yes. I didn't consider it a report to the Government. I wasn't someone who was reporting to the Government about any of the facts in this particular case, but I did disclose to the Government, in its interview with me—its representative's interview with me, that I had had the second conversation about the telephone call.

Mr. STEWART. And you were issued a tape recorder by the Government, in case Mr. Holmes should come back a third time, isn't that right?

Mr. INGRAM. I don't know whether or not, that that was the exact time that that event occurred, or not, but, yes, I was issued a recording device by the Government, which was never used, I might add.

Mr. STEWART. You never had an occasion to use it?

Mr. INGRAM. Well, I never used it.

Mr. STEWART. OK. Now, during the grand jury investigation—well, before the grand jury investigation, I take it you described this one phone call you got from Judge Nixon, where he was irate, that evening?

Mr. INGRAM. Yes. I didn't say he was "irate."

Mr. STEWART. That was my word. He was "upset."

Mr. INGRAM. He was upset.

Mr. STEWART. OK. But after that, Judge Nixon never spoke to you about his testimony, did he?

Mr. INGRAM. He did not. No.

Mr. STEWART. And he never spoke to you about your testimony?

Mr. INGRAM. Absolutely not.

Mr. STEWART. So based on your experience during the investigation, it was Mr. Holmes, not Judge Nixon, who was concerned about your testimony?

Mr. INGRAM. I never spoke to Judge Nixon about my testimony or his testimony. And can I say something about the telephone call that Judge Nixon gave to me? I don't think there was anything out of the ordinary about that. I received that telephone call—I think it was appropriate in every sense of the word, for him to call, and try to determine what was happening.

I suspect, had I been interviewed in that manner, I would have called somebody to find out what was going on.

Mr. STEWART. I just want to ask a couple of specific questions.

Mr. INGRAM. Judge Nixon did not try, in that telephone conversation, to tell me what I should say or I shouldn't say, or what I should do or shouldn't do. I mean, there wasn't anything in that telephone conversation, in April 1984, at all, in a sense of wrongdoing, or that he shouldn't have called me, or——

Mr. STEWART. He was just trying to find out what's going on?

Mr. INGRAM. So far as I know, that was it.

Mr. STEWART. I wanted to ask a couple of specific questions. I believe it's been your testimony before, that you have no recollection of ever going to Mr. Holmes's office, at the district attorney's office with Judge Nixon?

Mr. INGRAM. That's correct.

Mr. STEWART. And I believe it's also been your testimony that you never had an occasion, after the phone call from the farm, when you told Bud Holmes that Wiley was on "cloud nine" or was very happy about the phone call from the farm——

Mr. INGRAM. Now wait a minute. I don't believe that I ever said that Wiley Fairchild was on "cloud nine" about the telephone call from the farm because I didn't have knowledge of that telephone call until well after this investigation got started. So now, the only time that I indicated to Bud Holmes, to Mr. Holmes, that Mr. Fairchild was pleased, I believe it was a time after Mr. Holmes and Judge McKenzie had visited with Mr. Fairchild in his office one morning.

And I believe that is my previous testimony and that's my recollection today.

Mr. STEWART. You anticipate me completely, Mr. Ingram.

Mr. INGRAM. OK.

Mr. STEWART. All right. On that oil transaction, I don't really want to talk, ask you too many questions about it. Just a couple of summary questions. It was your understanding that that was an entirely proper transaction?

Mr. INGRAM. It was, in every respect, a proper transaction, and the jury so found it to be. In fact the Government, in its closing argument to the jury, made the statement that there was no relation between the oil transaction and the *Drew Fairchild* case, and I believe you'll get that testimony—I mean, that transcript of that argument, you will see that statement in there.

Mr. STEWART. And you told the investigators and the prosecutors, from the very beginning, that there was nothing wrong with that transaction?

Mr. INGRAM. From day one.

Mr. STEWART. OK. And in fact their response to you when you said that was that, that was true, and you would be the measuring stick for their investigation thereafter?

Mr. INGRAM. Not at that time.

Mr. STEWART. In February, though, 1985, that was their response, finally made?

Mr. INGRAM. That's correct.

Mr. STEWART. So after February 1985, you have become the measuring stick of the investigation on this issue?

Mr. INGRAM. I think that the proper context of how that statement was made to me was that the Government believed, at that point, that the statements that I had made about the transaction and about the facts of this investigation were correct, and that there was conflicting testimony by many other people about the transaction.

But as far as that particular representative of the Government was concerned, that he believed my testimony to be accurate and thus was the measuring stick, or some statement like that, as to the truthfulness of the facts.

Mr. STEWART. And that representative was the lead prosecutor?

Mr. INGRAM. Sure.

Mr. STEWART. And my question, though—and perhaps you're not going to know the answer—is, if you were the measuring stick and you said it was a perfectly legitimate transaction, do you know why Judge Nixon was still charged with having done something illegal in connection with it?

Mr. INGRAM. I do not.

Mr. STEWART. I want to ask quickly about your experience before the grand jury. This is first time before you went before the grand jury in July 1985.

Mr. INGRAM. OK.

Mr. STEWART. The night before you appeared before the grand jury, you and your attorney—a man named Joel Blass—

Mr. INGRAM. Yes.

Mr. STEWART [continuing]. Met with prosecutors, didn't you?

Mr. INGRAM. We did.

Mr. STEWART. And Mr. Blass, your attorney, asked if there were any documents about that investment that you ought to review before you testified?

Mr. INGRAM. If they had any documents that I had not seen, or that would be presented to me in the grand jury, that they needed to present them to me now, so I could review them and know what they were, and be prepared to testify.

Mr. STEWART. And the prosecutors gave you no such materials?

Mr. INGRAM. Gave me nothing. Gave me none.

Mr. STEWART. The next day you went into the grand jury. You marched in and testified, correct?

Mr. INGRAM. Right.

Mr. STEWART. You're not allowed to have your lawyer in there, and there's no judge in there either?

Mr. INGRAM. That's correct.

Mr. STEWART. And you testified accurately, to the best of your recollection?

Mr. INGRAM. I surely did.

Mr. STEWART. And at the end of your testimony, didn't the prosecutor produce a second set of documents which are marked as an exhibit in this trial?

Mr. INGRAM. Yes. They did.

Mr. STEWART. It was in an envelope with your handwriting on it, wasn't it?

Mr. INGRAM. Sure.

Mr. STEWART. And then they asked you if you'd give your fingerprints, so they could determine that you had some connection to that?

Mr. INGRAM. Sure. Right. When there was no question. But I said that's the envelope and that's what was transmitted back.

Mr. STEWART. Now you'd just forgotten about the documents until that moment?

Mr. INGRAM. No. I hadn't forgotten about the documents, and I think it's important that you and everyone understand about the second set of documents. When the documents were delivered to my office, they were incorrect. I sent the documents back in the envelope in which they came. Wrote in my handwriting the correction on the face of the brown envelope, and sent them back by a Fairchild employee to be corrected.

Without further thought, or without doing any investigation, because I didn't deem there to be any to be done, I assumed they corrected the instruments. I didn't know that there was a second set of instruments prepared, and that the first instruments were somehow kept in a file or retained.

So until I got in the grand jury room, I had no idea that there was two sets of documents. I assumed the first set of documents had been corrected simply by changing the acreage and sent back to me, is what I assumed.

Mr. STEWART. The prosecutors sandbagged you with that, didn't they?

Mr. INGRAM. Well, when I appeared before the grand jury, every time the Government asked me to produce something I produced it. They didn't have to subpoena me. They didn't have to do anything other than ask me for it. When I went before the grand jury, I was under the impression—not the impression. I was under the express statement, to me by the Government, that I was a fact witness in that case, and that the Government had no problem with me as a witness or anything else, and I went in that grand jury room in the hands of the Government, not in any way suspecting, or feeling threatened by the circumstances. All right?

And so when we met in my office the evening before my grand jury testimony, with Joel Blass present, and we asked for any information which I didn't have, or any documents which I didn't have, I assumed if the Government had the documents they would have given them to me because we asked for them.

And then, when we got in the grand jury room, the stage was set for me to testify that there wasn't but one set of documents, and then after I had testified to that, then the Government produced what apparently was a second set of documents.

And I felt aggrieved about that then—and I do now. I don't think it was fair, and I don't think I was treated right about it.

Mr. STEWART. Mr. Ingram, let me ask you one last thing about your first grand jury appearance. Do you recall that you were questioned during that grand jury appearance about the possibility that Wiley Fairchild was being blackmailed?

Mr. INGRAM. Yes.

Mr. STEWART. Do you recall that you were asked about that question in a couple of different forms, that came back and said, do you know if he's been blackmailed, do you know anything about Bud Holmes shaking him down? There were several questions on the subject. Do you remember that?

Mr. INGRAM. Yes, there were questions on that subject, and that kind of an allegation, as it relates to me, was absolutely unfounded. The worst thing anybody has ever said about me—and nobody in their right mind would believe that, and nobody did believe that.

And even the person who made the statement now doesn't believe that.

Mr. STEWART. Now when you were asked about it in the grand jury, you said that you didn't know anything about such allegations, isn't that correct?

Mr. INGRAM. Sure.

Mr. STEWART. OK. Now Judge Nixon appeared before the grand jury the day before you—and again I'm asking a question you may not know the answer to—do you have any idea why he wasn't asked those questions?

Mr. INGRAM. I don't know. Nobody discussed with me what they were going to ask Judge Nixon, or anything of that nature.

Mr. STEWART. Thank you, Mr. Ingram. I have no further questions.

The CHAIRMAN. Mr. Cardin, Mr. Stewart has explored the business relationship between Judge Nixon and Mr. Fairchild considerably, so if I limited you unduly, and you feel like it's necessary for redirect on that subject, it will be allowed.

REDIRECT EXAMINATION

Mr. CARDIN. We're going to save the committee time. We will not be doing redirect on that issue.

In fact I just really want to ask a question or two about Mr. Stewart's comments about what the prosecutor told you in February 1985, when he said that you were the "measuring stick" of the investigation in regards to the oil deal.

Isn't it true, at that point, that you were the only person who had come forward about the telephone conversation with Judge Nixon in which Judge Nixon conveyed to you that he had been helpful to Drew, and you were the only person that they had at that time?

Mr. INGRAM. No. I do not know that to be the circumstances. In fact we learned of the importance of the telephone call from Mr. Hess, who was Mr. Fairchild's lawyer, in that—January or February 1985.

So I have been under the assumption, all along, that the Government knew about the telephone call long before they talked to me about it, and that they had that information from Mr. Fairchild and maybe from others. But I was under the impression that the

Government knew about the telephone call a long time before they talked to me.

Mr. CARDIN. Knowing what you know now, isn't it true that you were the only person at this time, to your knowledge, who had talked to the investigators concerning the telephone conversation in February 1985?

Mr. INGRAM. I don't know that I know that from the total record. It was my impression, in January 1985, that the Government knew about the telephone call.

In fact I'm positive that the Government did know about the telephone call, because that information, that the telephone call was important to the Government came from Mr. Hess, Mr. Fairchild's lawyer.

Mr. CARDIN. The important point is that once you knew about the importance of the telephone call, you came forward and told as much information as you—

Mr. INGRAM. Absolutely. Because when Joel Blass came back out into the waiting room of the airport, because we could not possible find out what the situation was, he came back out into the waiting room of the airport and said to me—asked me the question—if I knew about this particular telephone call. I said I did.

Mr. CARDIN. And that is when you told the Government about your conversation with Judge Nixon?

Mr. INGRAM. Sure. Yes. Told them immediately, when it became apparent to me that that was an important issue.

Mr. CARDIN. In the investigation?

Mr. INGRAM. Right.

Mr. CARDIN. Thank you, Mr. Ingram.

The CHAIRMAN. Mr. Stewart.

RECROSS EXAMINATION

Mr. STEWART. Just quickly. Mr. Ingram, you mentioned you were in the waiting room at National Airport. You had come up to Washington to meet with the prosecutors, then?

Mr. INGRAM. I sure had. Once they'd subpoenaed my staff, I wanted to know what was going on.

Mr. STEWART. You were feeling their breath on your neck, weren't you?

Mr. INGRAM. No. I was not feeling their breath on my neck. I wanted to know what the situation was, because I was in the posture of providing the Government with whatever information it wanted with respect to the situation that I had, by the simple telephone call, and so when the subpoenas came out to my staff, and to my former staff, then Joel Blass and I came to Washington for a conference.

Mr. STEWART. My question was inelegant. I apologize. I meant only that they were subpoenaing your staff. They were coming back after you. You were concerned that they thought there was something you had done wrong?

Mr. INGRAM. No wait a minute. I didn't consider that they were coming after me, but I want to tell you that I have a healthy respect for a Federal prosecutor and for a grand jury, and I have even a more healthy respect for one now than I've ever had in my

life, and I will tell you that I'm not about to sit by and wait to see what's going to happen.

When the subpoenas came to my office, then I said I want to go find out what the situation is, and I did.

Mr. STEWART. Thank you.

EXAMINATION BY THE COMMITTEE

The CHAIRMAN. Mr. Ingram, in what context did you—if you did; I think you did—did you refer to yourself as the measuring stick? Measuring stick of what?

Mr. INGRAM. I did not refer to myself as that. The Government did; the Justice Department did. And—

The CHAIRMAN. The measuring stick for what?

Mr. INGRAM. For the accuracy of the facts in this case.

The CHAIRMAN. In the entire case, or in the business relationship between Mr. Nixon and Mr. Fairchild; do you recall?

Mr. INGRAM. Well, I think the whole focus of the case had to do, as far as I was concerned, with the business transaction between Judge Nixon and Mr. Fairchild.

The CHAIRMAN. You testified, did you not—and please correct me; I'm sort of asking—that in your opinion there was no relationship whatsoever between the business relationship between Mr. Fairchild and Judge Nixon and anything having to do with the *Drew Fairchild* case.

Mr. INGRAM. I did testify to that, and that's accurate.

The CHAIRMAN. On what do you base that conclusion?

Mr. INGRAM. I base that conclusion on my knowledge of the transaction, my knowledge of the parties, my knowledge of the facts surrounding the situation. At no time—at no time in any of that transaction—was there ever any indication that that royalty transaction was anything except an investment in royalty properties, in oil properties, and nothing more. It had absolutely nothing whatsoever to do with the *Drew Fairchild* drug case. It was totally unconnected. There just was not a basis for that.

Certainly, Judge Nixon never indicated that to me, Mr. Fairchild never indicated that to me, and—

The CHAIRMAN. Well, the conclusion of the business agreement between Judge Nixon and Mr. Fairchild predated the arrest of *Drew Fairchild*, did it not?

Mr. INGRAM. It did.

The CHAIRMAN. By how long?

Mr. INGRAM. Well, there, the agreement with respect to the oil investment occurred in early 1980, and that transaction was orally made between those parties in early 1980.

The CHAIRMAN. When was the indictment, just for the record—who knows? When was the indictment of *Drew Fairchild*?

Mr. INGRAM. Mr. Chairman, I don't think there was an indictment of him.

The CHAIRMAN. When was the arrest?

Mr. INGRAM. Mr. Chairman, the bust was in August 1980.

The CHAIRMAN. The bust was in August 1980.

Mr. INGRAM. That's correct.

The CHAIRMAN. And when was—I know there is some controversy about oral agreement versus papers, but when do you as Mr. Fairchild's lawyer and intermediary consider that the business agreement was reached between the two?

Mr. INGRAM. In early 1980. In about March 1980.

The CHAIRMAN. Mr. Ingram, let me ask you a hypothetical question. We are not in court here—I know we're acting like it, but we're not. We are trying to gather all of the evidence, and this is a complicated case involving a lot of people and a lot of difficulties. But I feel constrained to ask you this question.

You are a lawyer in good standing, as you have testified, and in that regard, under the law, you are an officer of the court; is that not correct?

Mr. INGRAM. That's correct.

The CHAIRMAN. As an officer of the court, practicing law, if Federal judge "X" comes to you and says, "Mr. Fairchild, I want to do business with businessman 'Y,'" whom Federal judge "X" does not know, but knows that you know, is that a violation of your oath as an officer of the court to be the intermediary on behalf of a Federal judge to a party that he does not know on behalf of a business transaction?

Mr. INGRAM. I have certainly thought about that many times. Certainly, as I have testified to before, I felt on-the-spot about that particular situation and was reluctant about it; but no, I do not consider that to have been a violation of my oath or a violation of my duty.

The CHAIRMAN. And that is your conclusion now even in retrospect?

Mr. INGRAM. That is my conclusion in retrospect.

The CHAIRMAN. That you can maintain your integrity before the court even if you said yes or said no to that Federal judge.

Mr. INGRAM. I don't think there is any question about that. And in this particular situation, I don't think that there was anything relative to this transaction that would have made any difference whatsoever with respect to the court and what the court would do or wouldn't do.

The CHAIRMAN. Any questions by the panel?

Mr. Danforth?

The VICE CHAIRMAN. Mr. Ingram, did Wiley Fairchild ever say to you that he thought that he was being blackmailed by Mr. Holmes?

Mr. INGRAM. No, sir; he did not.

The VICE CHAIRMAN. You knew the relationship between Wiley and his son. In your opinion was Wiley interested in helping his son?

Mr. INGRAM. I think he was, even though that relationship, Senator, was very tumultuous, it was very difficult down through the years—it really was very estranged. There would have been times, and probably at that time, I may well have been surprised that Mr. Fairchild would have offered any help to Drew because of the estranged relationship between them.

The VICE CHAIRMAN. Were you—

The CHAIRMAN. What is your blood relationship to Wiley?

Mr. INGRAM. I am his second cousin.

The CHAIRMAN. Second cousin to Mr. Fairchild.

Mr. INGRAM. Yes, sir.

The CHAIRMAN. Excuse me.

The VICE CHAIRMAN. At about the same time that Mr. Fairchild met Judge Nixon, and Mr. Holmes and Judge Nixon went out to Mr. Holmes' farm, at about that time were you seeing Wiley Fairchild on a fairly regular basis?

Mr. INGRAM. Yes, I believe I was.

The VICE CHAIRMAN. How often would you say you were seeing him during that period, say, the month or two right before then?

Mr. INGRAM. OK, let's go back to—I'm not sure I know the date you are talking about; could you clarify the date you are talking about?

The VICE CHAIRMAN. Well, I think that date is in dispute.

Mr. INGRAM. OK.

The VICE CHAIRMAN. But it has to do with the time of the event when Wiley Fairchild and Judge Nixon met, and then that day there was a car ride out to Mr. Holmes' house and so on—"the day"—at about that period of time.

Mr. INGRAM. OK. I don't know when that date was, all right? But previous to that time, I saw Mr. Fairchild on a regular basis.

The VICE CHAIRMAN. So subsequent to the bust, during the time that this case was being bandied about in the U.S. Attorney's Office and then the prosecutor's office—during this whole period of time—

Mr. INGRAM. I would say that I saw him on a frequent basis, more than once a month. I talked to him on the telephone more than I saw him in person.

The VICE CHAIRMAN. And you had a good relationship with him during this time, to your knowledge?

Mr. INGRAM. Yes.

The VICE CHAIRMAN. And he at no time expressed the view that he was being blackmailed?

Mr. INGRAM. Not to me, he did not, he certainly did not. Now, I have testified that he expressed his displeasure with the circumstances of this case being on the State docket and it being in the press and causing a great deal of—

The VICE CHAIRMAN. But his concern was about the case and the way the case was being handled.

Mr. INGRAM. That's correct, that it was in and out of the courts, and that it seemed to be resolved on one hand and then not resolved on the other.

The VICE CHAIRMAN. Did he express concern to you about his family reputation, about the family name?

Mr. INGRAM. Yes. I think in the context of the press, he was concerned that the family name, because it was being used—it wasn't just that it was Drew Fairchild's arrest that was being publicized, but the publicity came about being the son of a wealthy family and that sort of thing, in the town. So it was unpleasant publicity for Mr. Fairchild.

The VICE CHAIRMAN. Now, when Judge Nixon telephoned you, it is my understanding that he indicated that he had done what Wiley Fairchild had asked him to do, right?

Mr. INGRAM. Yes. I had the sense when I finished that phone call that he had been helpful with respect to the case that we were talking about.

The VICE CHAIRMAN. He indicated, but you said, in very general terms, nonspecific; it was a little bit difficult to track exactly what he was saying——

Mr. INGRAM. That is correct.

The VICE CHAIRMAN [continuing]. But the message that he gave you was that Wiley had asked for his help and that he had spoken to Holmes as requested and that there was a positive reaction.

Mr. INGRAM. That's correct.

The VICE CHAIRMAN. Did he give you any indication as to why he was telling you this?

Mr. INGRAM. No. I don't think that there was a need for him to tell me why he was telling me that. I think——

The VICE CHAIRMAN. He just called out of the blue, and this was the message?

Mr. INGRAM. No, sir, he did not just call out of the blue and that was the message. The phone call came in not for that specific message, but for whatever reason Judge Nixon would have had to have called me or for me to have called him—not as a——

The VICE CHAIRMAN. You mean, you may have called him—you may have originated that phone call?

Mr. INGRAM. I very well may have. I——

The VICE CHAIRMAN. And your phone conversation may have been about any number of subjects, and this was just a part of it.

Mr. INGRAM. Sure. Yes, sir, that's correct. I didn't——

The VICE CHAIRMAN. And the phone call was not originated for the purpose of conveying this message to you; it was just something that popped out of a conversation.

Mr. INGRAM. That's right. That's exactly right.

The VICE CHAIRMAN. And you had a general impression that the judge had been asked for help and that he had spoken to Mr. Holmes as requested and that there was a positive reaction.

Mr. INGRAM. Yes. And I think that has been my testimony in the trial and before the House.

The VICE CHAIRMAN. And did you think there was anything inappropriate in what Judge Nixon told you?

Mr. INGRAM. No, sir, I did not.

The VICE CHAIRMAN. You saw nothing inappropriate in the fact that he reported to you that Wiley had asked for his help and that he had spoken to Holmes as requested and that there was a positive reaction.

Mr. INGRAM. That is correct because Mr. Holmes is a State district attorney; Judge Nixon has no jurisdiction or authority over him whatsoever. I didn't perceive that to be some act of his office that he was engaging in at all, no, sir, I did not.

The VICE CHAIRMAN. Can I just ask you in general about Hattiesburg, Mississippi and the practice of law?

Mr. INGRAM. Yes, sir.

The VICE CHAIRMAN. It is a small community; it was said this morning to be about 45,000 people. Is there a distant, aloof relationship between the judiciary in Hattiesburg and the bar, or would you call it a fairly close relationship?

Mr. INGRAM. I think it's a close relationship, I really do.

The VICE CHAIRMAN. It is not unusual for judges, for example, to go hunting with lawyers?

Mr. INGRAM. In the past, it has not been unusual at all.

The VICE CHAIRMAN. Fishing with lawyers?

Mr. INGRAM. That's correct.

The VICE CHAIRMAN. See them at parties and social events, other people's homes.

Mr. INGRAM. That's correct.

The VICE CHAIRMAN. Maybe have a drink with them from time to time.

Mr. INGRAM. Sure.

The VICE CHAIRMAN. It is a very relaxed atmosphere, right?

Mr. INGRAM. Yes, and I think that that just grows out of a style and a way of life in our community, in our town. I know it is difficult to believe if you come from a metropolitan area, but in Hattiesburg, Mississippi and in that area, our whole community has kind of grown out of a rural setting of large families. You know almost everyone; you know everyone's family. There is not the line is drawn here, and you don't cross that line. You know, the judges in our area for years have gone to the same social functions that everybody else goes to in the community, do the same things about hunting and fishing and the other things that other people do.

There has not been a total separateness of the judiciary in the community, so I really think that's an accurate description of that.

The VICE CHAIRMAN. If a Federal judge were to just make a statement to a lawyer, a lawyer would tend to be very attentive to what the judge was saying, wouldn't he?

Mr. INGRAM. Certainly, yes.

The VICE CHAIRMAN. And the whole atmosphere in the community and particularly among the lawyers and with the judges is that generally they try to help one another, right?

Mr. INGRAM. Sure.

The VICE CHAIRMAN. It's not an adversarial relationship or a fearful relationship or an aloof relationship.

Mr. INGRAM. I would say that's accurate.

The VICE CHAIRMAN. Now, just asking you about sort of the general tone of events, if a judge were to say something and indicate an interest in something, an interest in a case, and say, "Look, I am not asking you to do anything," it wouldn't be unusual, would it, in that kind of setting for the lawyer to get the message?

Mr. INGRAM. Well, I think in the setting where that judge has nothing to do with that case, it is not in his court, it is not something that he has authority or jurisdiction over, then I don't think that that is an unusual practice or an unusual thing.

I am trying to think of instances, because I suspect in my 22 years, I could think of an instance where a judge in north Mississippi may well call a judge or a district attorney in south Mississippi and express concern about a family member or something of that nature. I wouldn't be shocked to hear that that had occurred, I surely wouldn't.

As a lawyer, many times, when I'm not even employed in a case, a family member will call me and say, "Look, our son is in trouble in a drug case" or in trouble with the law some way. That person

is being represented by another lawyer, and that family member will say, "Is there any way you can help us? Can you do anything to help us in this situation?"

And there have been many times that I have picked up the phone and I have called the district attorney to say, "Look, I've got a call from this family member, and they are concerned about their child. What can be done to help them?" Or this expression is made to be of assistance to them, you know.

I am not asking this district attorney to do anything illegal, unethical or immoral, but I do want the district attorney to know the expression of the family that is there and that somebody cares about those people. So I don't think that is unusual. I don't think that that is something that is wrong or something that violates a code of ethics.

The VICE CHAIRMAN. What is Judge Nixon's reputation in the community and among the bar?

Mr. INGRAM. I think Judge Nixon has been perceived to be a fine judge.

The VICE CHAIRMAN. Ethical?

Mr. INGRAM. Yes.

The VICE CHAIRMAN. Just one other question, and I apologize to the committee for taking so much time.

You were asked—and I did not take careful notes of what the question was or what the answer was, but it struck me at the time—you were asked the question, did you talk to Mr. Holmes during this period of time. And your response to that question as I recall—and the transcript would have to back me up—but as I recall, you said, "I didn't talk to him as a lawyer."

Mr. INGRAM. That's correct.

The VICE CHAIRMAN. It is very curious. I mean, you were asked did you talk to Mr. Holmes, and you had a little bit of difficulty in exactly how you were going to frame that answer.

Mr. INGRAM. Well, how I would frame that answer is that I wanted it to be clear that I did not represent Drew Fairchild in any sense of the word. Mr. Holmes' office is across the street from mine; we parked in the same parking lot on many occasions—

The VICE CHAIRMAN. I am asking more about a colloquialism, I guess, than anything else. But when you are asked the question did you talk to somebody, did you talk to Mr. Holmes, who was a prosecuting attorney—is it possible that you would answer that question just in your own conversation—I mean, you are from Hattiesburg, too—did you say, "No" and the answer could have been "Yes", and that would have been in your mind truthful?

Mr. INGRAM. Sure—in the context you've asked it, because I was trying—in my testimony, I was trying to convey to the jury and to the committee that I did not speak to Mr. Holmes in a representative capacity on behalf of anybody about this case. But that doesn't mean to say that in the parking lot or when he came through my office or at some social function or something like that, that he didn't talk about the *Drew Fairchild* case, or he didn't talk about many other cases that I had no official lawyer relationship to.

Am I communicating with you on—I'm not sure I clearly understand the question you are asking.

The VICE CHAIRMAN. Well, when you were asked in a setting such as this, with a transcript being taken, "Did you talk to Mr. Holmes?" your answer as I understand it depends on what do you mean by "talk."

Mr. INGRAM. Yes, that's correct.

The CHAIRMAN. In your appearance before the grand jury, were you asked whether or not you discussed at any time the Drew Fairchild case with Judge Nixon?

Mr. INGRAM. Yes.

The CHAIRMAN. What was your answer?

Mr. INGRAM. No, I did not discuss it—and I didn't.

The CHAIRMAN. And your testimony of your telephone call today before this committee of your telephone call with Judge Nixon, in your lawyer's mind, then, is not a discussion?

Mr. INGRAM. No, sir, not only in my lawyer's mind, but in my mind it was not a discussion, because I didn't ask him anything about that information he relayed to me, we did not have a discussion about it; it was an implied—

The CHAIRMAN. And you assumed that the grand jury, which you know is empaneled of citizens and not lawyers, when asked before a grand jury, under oath, "Have you ever discussed the *Drew Fairchild* case with Judge Nixon?" having had a telephone conversation with him, you told the grand jury, no, you never discussed the case.

Mr. INGRAM. That's right.

The CHAIRMAN. And you believe in your mind that that's true.

Mr. INGRAM. I certainly do, yes, sir.

The CHAIRMAN. Mr. Reid will inquire.

Senator REID. Thank you, Mr. Chairman.

Again just for a little background, in Hattiesburg, you have a county courthouse—

Mr. INGRAM. Yes, sir.

Senator REID [continuing]. And where does the Federal judge sit when he comes to Hattiesburg?

Mr. INGRAM. In the Federal court building.

Senator REID. And they are separate and apart?

Mr. INGRAM. Yes, sir, they are.

Senator REID. In your words, would you for me describe Bud Holmes?

Mr. INGRAM. Well, Mr. Holmes is a very—has had a career that has been colorful, highly visible. He is a very expressive person. I think I described to the House committee in my testimony that when you meet Bud Holmes, he will just about talk to you—whatever is on his mind, he will talk to you about it. He is a very expressive person. He has been very successful in his law practice and in his business—

Senator REID. Ex-law practice.

Mr. INGRAM. Yes. And I could go on with the description of him in a lot of ways, but that's a general description of him as I've known him over the 22 years.

Senator REID. Tell me, Mr. Ingram, did this whole proceeding have anything to do with the reason you are not in the State legislature?

Mr. INGRAM. It had absolutely nothing to do with that. I chose not to run for reelection in 1979——

Senator REID. Prior to this.

Mr. INGRAM [continuing]. Prior to this—for reasons that——

Senator REID. You don't need to—just so it had nothing—it doesn't matter the reason, but it had nothing to do with this, is that right?

Mr. INGRAM. OK, sir. Well, I want to tell you the reason.

Senator REID. Fine. Go ahead.

Mr. INGRAM. For the reason that the Mississippi legislature is a part-time job. I was chairman of the judiciary. I had a young law practice. I had two children, the older of which was 12 years old. And I felt compelled to give time and attention to my law practice, to my business interests and to my family. And I made that decision not to run for reelection on that basis and that alone.

Senator REID. We have heard from witnesses today that—and obviously, the jury agreed—that the investment that Judge Nixon made with Mr. Fairchild, there was nothing illegal about that, and you would agree?

Mr. INGRAM. I certainly agree with that.

Senator REID. And the jury agreed.

Mr. INGRAM. Yes.

Senator REID. Bud Holmes here today testified that when Judge Nixon talked to him about the *Drew Fairchild* case, he said he didn't want to know anything about it, and he didn't want him to do anything about it other than he, as I recall the testimony, words to the effect that Judge Nixon wanted Bud Holmes to know that—he kind of wanted to know what was going on, or words to that effect.

The point I am trying to make is that Bud Holmes said that Nixon asked for nothing—those were the words—in regard to the Fairchild case. Is that your understanding?

Mr. INGRAM. That's my understanding from reading the testimony and, you know, from what all——

Senator REID. You weren't there, and I wasn't there—neither of us were there——

Mr. INGRAM. Right, right.

Senator REID. So Nixon got nothing by initiating this conversation with Holmes except all this grief; is that about it?

Mr. INGRAM. So far as I know.

Senator REID. I mean, have you heard or read anything that he was given any favors?

Mr. INGRAM. Absolutely not. I don't think anybody has ever even suggested that, have they?

Senator REID. Not that I——

Mr. INGRAM. I mean, in all the record that I've seen—and I haven't read all the record, but I have read a good bit of it—but I don't think anyone ever suggested that. So I am saying you are right; yes, sir, you are right.

Senator REID. Thank you.

The CHAIRMAN. Mr. Chafee.

The VICE CHAIRMAN. He will be back.

The CHAIRMAN. Mr. Wirth.

Senator WIRTH. I wanted to ask you a little bit more about Hattiesburg, if I can. Have you always lived in Hattiesburg?

Mr. INGRAM. No, sir. I was born and raised south of Seminary, Mississippi, in Covenant County, on a farm.

Senator WIRTH. When did you move to Hattiesburg?

Mr. INGRAM. When I finished law school. I went to town to practice law.

Senator WIRTH. What year was that?

Mr. INGRAM. Nineteen sixty-seven.

Senator WIRTH. How does the public in Hattiesburg get information about what's going on, and about this particular situation—where do they get their information?

Mr. INGRAM. From the television station and the newspaper.

Senator WIRTH. And how many television stations are there in Hattiesburg?

Mr. INGRAM. Well, at that time we had one; now we have two.

Senator WIRTH. And how many newspapers are there?

Mr. INGRAM. There is one.

Senator WIRTH. And is that a daily paper in Hattiesburg?

Mr. INGRAM. Yes.

Senator WIRTH. If you were running for public office, which you have done, what is the best place to get information out—what's the most powerful medium in Hattiesburg?

Mr. INGRAM. Television; television by far is the most powerful medium in Hattiesburg, no question about it.

Senator WIRTH. And that's where most of the people get their information?

Mr. INGRAM. That's right. When I ran for the Senate in 1971, that was the emphasis. I used television—

Senator WIRTH. You wanted to get on Hattiesburg television.

Mr. INGRAM. That's right.

Senator WIRTH. And if something is on Hattiesburg television, everybody in town sees it—what is the station in Hattiesburg?

Mr. INGRAM. WDAM.

Senator WIRTH. Channel—

Mr. INGRAM. Seven.

Senator WIRTH. And do the reporters stay around in Hattiesburg for a long time?

Mr. INGRAM. Sure.

Senator WIRTH. I mean, they've been there for a period of time—the political reporters?

Mr. INGRAM. That's correct. They've been there for several years. I don't know how long, but many of them are residents of the area and have been for a lifetime.

Senator WIRTH. And you said there is a consistent kind of community involvement of the reporters there. The reason I am asking this is to just get a sense of how much a part of the community and understanding of the community are the people reporting for the—

Mr. INGRAM. Well, I would certainly say that there is a living in the community, an involvement in the community—you know, when you go to Chamber of Commerce functions or community-related functions, you may see personnel from the television station who are there covering and reporting the event, and then you

would see some of them who are there because they are interested in the community, who are not in their official capacity.

Is that what you're driving at?

Senator WIRTH. I'm just getting a sense of small city, small town television and how that works.

We saw a tape earlier of Nancy Allday, I think, at Channel 7, the reporter.

Mr. INGRAM. Yes.

Senator WIRTH. Did you know her?

Mr. INGRAM. I did not know her other than that—I'm assuming she was a reporter. I can't even recall——

Senator WIRTH. Is she still there, do you know?

Mr. INGRAM. I think she is.

Senator WIRTH. Do you know the reporters for Channel 7, generally?

Mr. INGRAM. I knew some of them, yes, I surely did.

Senator WIRTH. And she did the report that we watched. You don't know what has happened to her?

Mr. INGRAM. I do not.

Senator WIRTH. You don't know how long she was in town?

Mr. INGRAM. I do not, no.

Senator WIRTH. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Jeffords.

Senator JEFFORDS. Thank you, Mr. Chairman.

Mr. Ingram, during what period of time were you the lawyer, or are you still the lawyer, for Wiley Fairchild?

Mr. INGRAM. I am not now the lawyer for him, but I was from 1967 up until this investigation, for different periods of time during that time. There would be times from 1967 to 1984—there would be periods of time when I did no work for Mr. Fairchild. Mr. Fairchild is a volatile person, so sometimes he would become dissatisfied and displeased with me about certain things, so I wouldn't represent him for a couple years; and then I would get a telephone call, asking me to represent him in certain matters, and I would.

Senator JEFFORDS. During late 1979 through the end of 1981, were you his attorney?

Mr. INGRAM. Yes, I believe I was.

Senator JEFFORDS. Were you his attorney in 1984, during the period of time when he was under indictment?

Mr. INGRAM. No, I was not.

Senator JEFFORDS. Did you have any discussions with him during that period of 1984 at all?

Mr. INGRAM. I did not.

Senator JEFFORDS. OK. You handled many of his business deals, oil leases, et cetera, during the period that you were his lawyer?

Mr. INGRAM. I did.

Senator JEFFORDS. OK. Now——

Mr. INGRAM. And please know that I was not the only lawyer for Mr. Fairchild. He had lawyers in Jackson, he had lawyers in several other places; he had even other lawyers in Hattiesburg that he used. So I was not his exclusive counsel.

Senator JEFFORDS. Now, during the period that you testified, late 1979 or early 1980, an agreement was reached between Wiley Fair-

child and Judge Nixon to purchase, I think, three oil properties, and the price of \$9,500 was set; is that correct?

Mr. INGRAM. That's correct.

Senator JEFFORDS. When did that money exchange hands? When did Judge Nixon pay for those leases?

Mr. INGRAM. I do not know, because Judge Nixon paid the notes, and I don't know the schedule of when he paid the notes.

Senator JEFFORDS. Are you aware as to whether or not there was an increase in value from that period of time until the time the deeds were executed?

Mr. INGRAM. No, I was not aware of that.

Senator JEFFORDS. Were you aware that the deeds were backdated?

Mr. INGRAM. Yes, I was aware of that.

Senator JEFFORDS. Did you express any concern about that?

Mr. INGRAM. No, I didn't express concern about that. There was some discussion between Mr. Fairchild and myself about when this transaction took place, but I did not express concern about that because that in itself is not an unusual thing to do. That in itself is not an illegal thing to do, nor is it unethical or improper to do.

Senator JEFFORDS. I think the words Mr. Wiley Fairchild used were, "it's done all the time"; is that correct?

Mr. INGRAM. Well, "done all the time" may mean something to him that it doesn't to me. I would say that that is not an unusual thing to occur; that is done frequently in many transactions.

Senator JEFFORDS. Well, why would it be done? Suppose there had been an increase in value from the initial agreement until such time and to backdate it—why would you backdate it?

Mr. INGRAM. Well, number one, you may well backdate an instrument to reflect the time that the transaction actually occurred. Another thing you would do would—you could have a reason to backdate the instruments relative to the value of the properties, no question about that. The properties, by the time you executed the instrument, could have increased in value or they could have decreased in value, so that might have been a part of that.

Those issues were not part of the discussions that Mr. Fairchild and I had.

Senator JEFFORDS. I guess what troubles me is, as I look through these dates and see when the discussions took place and then when the drug bust took place and then when the deeds were signed, and then there is a transfer from the Federal court to the State court and these kinds of things, and then Wiley pleads guilty to having had an illegal gratuity—did that not strike you that, with his guilty plea, that perhaps there had been something wrong?

Mr. INGRAM. No, it does not strike me as that there has been something wrong. I think that Mr. Fairchild was under significant pressure, and I think that he made a plea bargain agreement that he has testified to he shouldn't have made, that wasn't right; that there wasn't anything illegal about what he did, and that he regretted that he did that, and that he did it on improper advice. I think that testimony is in the record somewhere. And he has made public statements to that effect.

Senator JEFFORDS. Did he consult with you in 1984 at all on this issue?

Mr. INGRAM. He did not.

Senator JEFFORDS. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Kohl?

Senator KOHL. Mr. Ingram, I think everybody in the room today has enjoyed and benefitted from your description of how Hattiesburg functions in terms of its mores, its people, its habits, how the interactions occur between the legal fraternity and the rest of the society. I would be interested in your opinion—what, if anything—why is Nixon here today?

Mr. INGRAM. Well, I think that he is here today—and I don't know that my opinion is valid on that—

Senator KOHL. Yes, OK.

Mr. INGRAM [continuing]. Because I am a fact witness, and naturally, I have my own emotions and my own strong feelings about certain things. But I think he is here today because of the conviction at the hands of the jury.

Senator KOHL. Yes, but conviction of having not told the grand jury the truth, assertedly—

Mr. INGRAM. I mean, those were the two counts in the indictment—

Senator KOHL [continuing]. But so did he, then, do wrong, or did he just fail to tell the grand jury what he had done—because the grand jury is saying you talked about, were involved in, that Drew Fairchild situation, that case, and you didn't tell us that you were—I think I am sort of paraphrasing it. But listening to you, it wouldn't have been so unusual or wrong for the judge to express his concern about another human being to another person in his unofficial capacity as a human being in the Hattiesburg area. You could stretch your imagination and imagine how an honest judge might have done some of the things that he is being accused of having done today.

Mr. INGRAM. I think that the prosecution in its position that it took never took the position that Judge Nixon's talking to Bud Holmes was wrong. I don't believe that that was the position of the prosecutors.

I think the prosecutors recognized that Judge Nixon had a right to talk to Mr. Holmes. Mr. Holmes was a State district attorney, not under his jurisdiction at all, and he had the right as an individual to do that. And I don't think the prosecution ever took that position at all.

Their position—the position that the prosecution was taking was that somehow, the drug case was connected to the oil transaction. They never could document that. They never could prove that. And in the final analysis, after they went through a grand jury and an indictment and a trial—and I believe I am correct, now; I think I have read that statement that the prosecutor made when he said, when he admitted there was no connection. In his final statement, he admitted that there was no connection between the oil transaction and the drug case—

Senator KOHL. Wait, wait. But he is being indicted on two counts. Number one, he made a false or misleading statement that Forrest County district attorney Holmes never discussed the *Drew Fairchild* case with Judge Nixon. The first article of impeachment is certainly that one.

The second article of impeachment is the same kind of an impeachment statement. The false or misleading statement was that Judge Nixon had nothing officially or unofficially to do with the *Drew Fairchild* case in Federal court or State court; and that Judge Nixon "never handled any part of it, never had a thing to do with it at all, and never talked to anyone, State or Federal, prosecutor or judge, in any way to influence anybody".

And I seem to hear you say that in and around Hattiesburg, he having done what he did, if in fact he did it, would not have been so unusual, not illegal, not immoral, not necessarily unethical, but that his problem is that he just never told the grand jury that he did it when in fact he had done it.

Mr. INGRAM. I think that's the essence of why we are here.

Senator KOHL. Right.

Mr. INGRAM. You are correct.

Senator KOHL. Well, I don't know—I think some people might think that he wasn't supposed to be doing what he did; and then he denied having done something he wasn't supposed to have been doing in the first place.

But you are not seeing it that way. You are saying what he did almost from A to Z, in terms of his actions, was not illegal or crooked or immoral—he just failed to tell the grand jury that that's in fact what he did—is that right?

Mr. INGRAM. I'm saying that—I'm not reaching the ultimate conclusion about what Judge Nixon failed to tell the grand jury or didn't, OK? I can't reach that. A jury reached that conclusion; a jury reached that conclusion. And a jury reached the conclusion that what he did with respect to the oil transaction and what he did with respect to talking to Mr. Holmes, that there wasn't anything wrong with that. They found him not guilty on that, but did find him guilty on the two other charges.

Senator KOHL. Of not having told the grand jury that he did that.

Mr. INGRAM. That's correct, that's correct. And I'm assuming that that is why we are here today, as a result of the conviction on those two charges.

Senator KOHL. Well, I am not a lawyer, and I want you to know that, but I would imagine there may be some places in America where the first activity—having involvement, discussing, and talking—would have led to the second problem, also, because you have to ask yourself a question: If in fact in his mind, if he knew there was nothing wrong with what he did, why did he deny it to the grand jury?

Mr. INGRAM. And of course, I cannot answer that. I'm not debating with you that there might be a difference of opinion about—

Senator KOHL. A big one, a big one. I think that—

Mr. INGRAM. I'm not debating that with you, because—

Senator KOHL. I mean, there must have been in his mind—and we will probably hear about that next week—some idea that what you are saying is really not wrong was wrong, and that's why he denied that he had said it or talked about it to the grand jury. There is no other reason, if you just assume that he's a smart man, which he is.

Anyway, I have no further questions. Thank you.

The VICE CHAIRMAN. Senator Chafee.

Senator CHAFEE. Thank you.

Mr. Ingram, did you handle many negotiations for oil investments for Mr. Fairchild, either with investors or following up with the documents?

Mr. INGRAM. I did on occasion, but I did not do that as a routine. I did not do that as a routine matter. Mr. Fairchild had oil and gas specialists that he had on retainer who did a great majority of that work. But on occasions, I did prepare and I did negotiate transactions for him and prepare the documents; I surely did.

Senator CHAFEE. Now, you have testified that you felt—"uneasy" maybe was the correct word—about relaying to Mr. Fairchild Judge Nixon's request or suggestion that he, Judge Nixon, be permitted to enter into some deals with Mr. Fairchild; is that correct?

Mr. INGRAM. That's correct.

Senator CHAFEE. The promissory note—or notes, actually—that Judge Nixon signed—we have three of them here, one in the amount of \$2,000, one in the amount of \$4,500, one in the amount of \$3,000—those are rather legalistic. Did you draw up those notes, do you remember?

Mr. INGRAM. They were prepared in my office, yes. I don't think that I actually dictated those instruments word for word. I really think that what I did was I asked some staffperson in the office to—

Senator CHAFEE. Run them off.

Mr. INGRAM. Yes, sir.

Senator CHAFEE. Now, are you familiar with any other oil deals with Mr. Fairchild where not only the investor was cut in, but Mr. Fairchild lent him the money to finance the investment?

Mr. INGRAM. I don't know that I can recall specific times or specific instances, but I do know that that was not unusual for Mr. Fairchild to do that.

Senator CHAFEE. And for a Federal judge to come in on a deal like that didn't make your antenna go up in any way, or curiosity, or feeling that it might not be totally proper?

Mr. INGRAM. Well, I think I testified before that I felt uneasy at times, or that I was reluctant at times, but in that transaction I did not see any steps, anywhere, that were improper; I did not.

Senator CHAFEE. There has been testimony from Bud Holmes that you were in his office with Judge Nixon on May 14, 1982, prior to the trip out to the farm—not that you were a crucial figure, because there has been no suggestion that you went out to the farm—but it seemed previously you testified that you had not been at Holmes' office; am I correct in that?

Mr. INGRAM. I don't think that I testified I had not been in Holmes' office. I think I have seen an appointment sheet or something of that nature that indicated that I had an appointment with him on that day, but I was not in the office on that day with Judge Nixon and Mr. Holmes.

Senator CHAFEE. I see. Now, the call that came from Judge Nixon to you dealing with the reporting that he had talked to Bud Holmes—he, Judge Nixon, had talked with Bud Holmes—about Drew's case, as I recall, you said that Judge Nixon indicated that he'd been helpful in the case or that Holmes promised to be help-

ful. Could you repeat that about that? This is a very important conversation.

Mr. INGRAM. I realize it is an important conversation, but at the time that that conversation took place, I did not realize the significance of that conversation. And as I have said, as best I know how, Judge Nixon in a conversation with other matters being discussed, not the sole purpose of that telephone call, in an understated or an implied sense, I received the information that he had in fact talked to Bud Holmes about Drew Fairchild's case; and I have related that.

Senator CHAFEE. In answer to Senator Danforth's questions, you have described the community atmosphere in Hattiesburg and the close relationship between members of the bar and the judiciary; it is a small town. Would all that apply equally to a judge who came from—I believe Judge Nixon lives in Biloxi, does he, and Hattiesburg is what we'd call "on the circuit" for him?

Mr. INGRAM. Yes, that would apply. It would apply in that over the years, Judge Nixon had many friends and has many friends in Hattiesburg, Mississippi—many business people, many different people. It has not in the past been out-of-the-ordinary for Judge Nixon to attend social functions in Hattiesburg that were not related to lawyers and some related to lawyers.

Judge Nixon has had over the years close friendships in Hattiesburg.

Senator CHAFEE. When he comes up to sit, he sits for how long a period, normally?

Mr. INGRAM. I think that clear depends on what calendar he sets, but he has had that I am familiar with a two- or three-week calendar, so that he would come and spend three or four days of the week, sometimes a full week of time where he would spend a couple of weeks in Hattiesburg.

Senator CHAFEE. Would it be in the normal routine for him to call you on just a social call—I am harkening back now to the call in which he indicated distress over the grand jury investigation, and that he didn't try to influence you in any way, he was just trying to find out what's going on, was your report.

Mr. INGRAM. Yes. I think that Judge Nixon had a natural reaction to having been interviewed, and of course, he related to me that he was questioned or interviewed about the oil transaction, and so he called me to find out what I knew about the investigation, if I knew there was an investigation going on. And he was upset about the fact and the circumstance that there was an investigation going on—which I took to be a natural reaction to that.

Senator CHAFEE. Let me just pursue for 1 minute, if I might, about it would be perfectly normal for a Federal judge to call a State judge in connection with a case and put in a plug—is that adequate, is that a suitable expression—to express concern about the case, how it is coming, or how the defendant is doing, or a word for the defendant? You indicated that would be perfectly normal?

Mr. INGRAM. I saw and did not see anything unusual, and I think that you can debate whether or not that is normal, or whether or not that is ethical. Some people may have a different opinion about that. But I certainly think that was done, and I think that as a general rule, exception was not taken to that. I'm not trying to

debate the ethics of that. I am saying to you that I think that was done on occasion.

Senator CHAFEE. Even though you are not dealing with a lifetime judge, a judge who is always going to be there; you are dealing and talking with the person who received the call, in this case, Bud Holmes, you are dealing with somebody who is going to be out in the practice of law perhaps the next year—indeed, apparently, Holmes had made it well-known that he wasn't going to run for office again. Does it seem to you in any way that a judge, namely Holmes in this case, would be quite responsive to a call from a Federal District Court judge when the recipient of the call, Holmes, is going to be out practicing law, presumably in front of that judge, in a year or so?

Mr. INGRAM. I certainly think you could make that argument, and certainly, I wouldn't challenge you if you believed that. I spoke to the particular instance that was there.

Senator CHAFEE. Have you ever done—well, you are in a different situation.

That's fine. Thank you.

The VICE CHAIRMAN. Senator Mack.

Senator MACK. Thank you.

I want to clarify a point or two. I may have missed this, but I got the impression that in a phone conversation with Judge Nixon that he told you about his telephone conversation with Wiley Fairchild, and things had been taken care of for his son—something to that effect—is that correct?

Mr. INGRAM. In the telephone-conversation that I described, when Judge Nixon talked to me about having talked to Bud Holmes about the *Drew Fairchild* case, I got the sense that he had been requested to do that by Mr. Fairchild.

Senator MACK. And then in the grand jury you were asked whether you had had any discussions about—

Mr. INGRAM. Yes.

Senator MACK. And you indicated that you had not?

Mr. INGRAM. That's correct.

Senator MACK. And a little earlier, you indicated that as far as you were concerned, that conversation was not a discussion?

Mr. INGRAM. It was not a discussion. And the fact—

Senator MACK. I understand. Let me take you a step further.

Mr. INGRAM. OK.

Senator MACK. I'm going to give you a chance to—in your mind, then, and if we are here today discussing whether the false or misleading statement was in substance that Forrest County district attorney Paul Holmes never discussed the *Drew Fairchild* case with Judge Nixon, would you conclude that there was not a discussion from what you've heard?

Mr. INGRAM. No. I didn't make that conclusion because I don't know whether or not there was a discussion or not between Judge Nixon and Mr. Holmes. I mean, that was an ultimate conclusion that was presented to the jury, and I didn't make that conclusion.

Senator MACK. Your opinion of the conversation that you had on the phone with Judge Nixon did not constitute a discussion.

Mr. INGRAM. It absolutely did not because, as I said to everybody, when I finished that telephone conversation I was not absolutely

sure what the message was. It was understated, it was implied.
I——

Senator MACK. What does "understated" mean? I'm not sure that I——

Mr. INGRAM. Well, it would be that it was stated in such a manner that there was a message there for you to receive but it was not just outwardly expressed.

Senator MACK. Can you give me some idea of how that might have been said by him?

Mr. INGRAM. No, I really can't. I'm saying to you that there was not any detailed discussion between Judge Nixon and I about his talk with Bud Holmes. I'm saying to you that when I got off that telephone with him, I had the sense that he had talked to Mr. Holmes on behalf of Drew Fairchild at the request of Wiley Fairchild—but now, he didn't go into the detail about that and say, "Hey, look, I've called up Bud Holmes, and this is what we did." It was that he made that information known to me in a passing way as we were talking about other things. And when I finished the telephone conversation, I didn't have a bunch of facts to put together. I really attached no significance to what he said except receiving the message.

I didn't call Mr. Fairchild and tell him that. I didn't call somebody else and tell them. I took no action with respect to it. I didn't ask him any questions about it.

So quite frankly, in the grand jury room, when I was asked that question, I honestly said that I had not had any discussion with Judge Nixon, because I hadn't. And what's more than that, probably that particular phone call at that time probably did not even go through my mind that I had had with him.

Senator MACK. Thank you, Mr. Chairman.

The CHAIRMAN. Are there any other questions of the panel?

Senator REID. Mr. Chairman, I have a question of you that may relate to—is this going to be it for today?

The CHAIRMAN. We will deal with that right now, Senator Reid. Are there any other questions? Can this witness be dismissed?

Mr. CARDIN. On behalf of the managers, he may be dismissed.

The CHAIRMAN. Thank you, Mr. Cardin.

FURTHER CROSS EXAMINATION

Mr. STEWART. I did have one question, or just a couple questions. I will try to be very brief.

Mr. Ingram, I want to follow up one point Senator Danforth raised with you, whether Wiley had told you that he thought he was being blackmailed. Your answer to that was that no, he never did say that to you.

Mr. INGRAM. I don't believe he ever said that to me. I think I have testified to that several other occasions.

Mr. STEWART. OK. Since then you have discovered to your shock, I guess, that Mr. Fairchild thought you might have been one of the potential blackmailers?

Mr. INGRAM. And that's preposterous.

Mr. STEWART. Of course it is. But that would explain why he never raised the issue with you before, wouldn't it?

Mr. INGRAM. I would assume so.

Mr. STEWART. Thank you.

Mr. INGRAM. I was shocked when I heard that.

The CHAIRMAN. Mr. Ingram, thank you for your testimony. You are dismissed.

Mr. INGRAM. Thank you, sir. May I be finally excused?

The CHAIRMAN. Yes, that's correct.

Mr. INGRAM. Thank you.

The CHAIRMAN. Mr. Edwards, or Mr. Sensenbrenner, does this conclude the House's case?

Mr. KEITH. Mr. Chairman, there are a couple of minor house-keeping manners. The parties have agreed to some stipulated facts. I have provided those to Mr. Purdy, copies of those, which both parties have signed.

The CHAIRMAN. They will be accepted.

Mr. KEITH. The second thing I would point out is that we do have excerpts from Judge Nixon's own testimony, both at his criminal trial and before the House, which we believe are party admissions, and we would ask the committee to consider those. I don't necessarily want to take the committee's time to read those into the record. They are included in our exhibit binder, I think, as exhibit 26.

The CHAIRMAN. We have the complete trials included in the record. Is there any objection to portions?

Mr. STEWART. I can't think of a good grounds. I'd rather have everybody read the whole thing rather than just read a blurb if they think they ought to chop it up. I mean, that's just playing into my argument.

The CHAIRMAN. Well, we'll let them play into your argument.

Mr. STEWART. I thought that was possible.

Mr. KEITH. The final thing, Mr. Chairman, we would just move into evidence all of our exhibits. There were a couple that were not previously introduced in the other proceedings. Those include the recent decision of the district court and the post-conviction ruling; the Fifth Circuit's affirming that opinion—

Senator REID. You are going to have to talk so we can hear you.

The CHAIRMAN. Go ahead and sit down. We can hear you better.

Mr. KEITH. I'm sorry. We would ask the committee simply to introduce into evidence those exhibits in our exhibit book which were not included as either trial or House subcommittee exhibits. There are a few of those. Those include some of the judicial rulings that have taken place since the House proceedings last summer; the post-conviction ruling; the Fifth Circuit's opinion that was issued a couple of weeks ago on that issue, as well.

Mr. STEWART. No objection.

The CHAIRMAN. They will be admitted.

[The documents referred to were marked House Exhibits Nos. 1 through 40 and were admitted into evidence.]

Senator CHAFEE. Mr. Chairman, am I correct in believing that all the prior testimony, whether it has been in the House hearing or the trial itself or the post-conviction or the appeals or whatever it is, all of those official documents as I understand it are a part of the record, and we can refer to any of them; is that correct?

The CHAIRMAN. That's correct.

Senator REID. Mr. Chairman.

The CHAIRMAN. We are not quite through with this. Is there anything else from the managers?

Mr. BARON. That's all for the House.

The CHAIRMAN. Does the House rest its case? I can't think of any non-legal language.

Mr. BARON. The House rests.

Mr. STEWART. Mr. Chairman, if I could just raise another house-keeping matter. If this is the appropriate time to move into admission—and we have asked Mr. Harvey this question—move into admission the exhibits we have referred to in cross-examination, we would like to do that now. We discussed that with counsel—

The CHAIRMAN. Absolutely. I want to do all of that. I just want to find out what is on the minds of the panelists here.

Mr. Danforth.

The VICE CHAIRMAN. Mr. Chairman, yesterday the point was made by Mr. Stewart that there was some dispute as to the transcript with respect to—it relates to Article II, that Judge Nixon “never handled any part”, and so on, “in any way influence anybody”. And there was a question as to whether there was a missing word. My question is whether there has been any progress between the parties on agreeing to what the transcript should state, and if not, whether the committee could have the benefit of some technical expertise to make out what is on the tape.

Mr. STEWART. If I could report on that, we did succeed in not reaching any agreement on it, and accordingly, we had at the lunch break experimented with playing the tape over the loud-speaker system here so you all could hear it. It is a poor-quality tape; it was made in a large grand jury room. And when we put it on the loudspeaker system, it was very difficult to understand. And what I propose, since I was the moving party on this problem, is that on Monday, which is our day off, we will consult on possible technical options such as having a small tape recorder directly in front of the panel that you could hear better.

The sound quality was so poor, it would not have resolved the issue, and I was concerned. We are going to try to address that on Monday and then make it clear to the panel on Tuesday.

Is this the proper time to move the exhibits?

The CHAIRMAN. Mr. Reid, what is your question?

Senator REID. Mr. Chairman, I have been now here seven years and away from the practice of law, but I feel that it is appropriate—the House has rested their case—but as one panel member who has an obligation as the rest of the Senate, to give some of my very brief reaction to what has gone on so that the parties can prepare their cross-examination and their direct examination. I'll be very brief.

I have watched, as much as I have had the opportunity, the Hastings proceedings. I have been told there that this man has been acquitted, and it is very difficult to impeach. I disagree with that.

Conversely, I have been told in this case that Judge Nixon has been convicted, and therefore I have no choice but to vote for impeachment. I disagree with that.

The CHAIRMAN. Well, let me just get the record straight—

Senator REID. But let me——

The CHAIRMAN [continuing]. I am going to interrupt you—let's get the record straight that you can reveal who told you that or not reveal, or whether you are speaking euphemistically, but certainly, the Chairman or the Vice Chairman or nobody in authority has told you that. Nobody has said anything. We are here to listen, to hear the evidence, and make up our own minds individually.

Senator REID. OK.

The CHAIRMAN. Go ahead.

Senator REID. Now, having said that, I want both parties to know, at least from my standpoint, that unless I am convinced otherwise in the next proceeding in the next few days, I—I passed the bar in 1963—I can think of very few instances where I have seen a bigger waste of taxpayers' money than this whole proceeding here.

All the witnesses have testified that this man didn't do anything wrong, and here the prosecution admits in the closing argument that they have no basis for this bribery thing, and so they fall back on this perjury that is on no material fact.

So I would like both parties to understand that I think that they should direct, at least as far as I am concerned, their case toward that.

We have \$300 billion in savings and loans that has been ripped off by various people that we are going to have to pay; we've got drug cases running out of our ears, and we've got the Justice Department wasting their time on this kind of stuff.

The CHAIRMAN. Make your submissions.

Mr. STEWART. The exhibits—and I would read them simply by number for the record, and I understand the House has agreed on these—and it may sound like a bingo game, and I apologize—are: 53, 21, 23, 22, 25, 26, 29, 5, 6, 44, 32A, 47, 36, 35, 37, 59, 66, 54, 55, 73, and 17.

The CHAIRMAN. With no objections, they shall be admitted.

[The documents referred to were marked Respondent's Exhibit Nos. 5, 6, 17, 21, 22, 23, 25, 26, 29, 32A, 35, 36, 37, 44, 47, 53, 54, 55, 59, 66, and 73 and were received in evidence.]

Mr. STEWART. Thank you, Mr. Chairman.

The CHAIRMAN. Anything else?

Mr. STEWART. No, Mr. Chairman.

The CHAIRMAN. Mr. Stewart, can you tell us who your witnesses are going to be?

Mr. STEWART. Well, I had promised the Chair that I would provide that information by close of business today, and I know we are very close to it, but I did want an opportunity to sit with my co-counsel and talk about the last two days and make that final cut, which we'll do promptly and advise you.

I expect a number of character witnesses on behalf of Judge Nixon; a couple or three or four at most fact witnesses, who would be short; and Judge Nixon. That's essentially the case we are contemplating. Specific names right now—I'd just as soon fudge for another hour and a half.

The CHAIRMAN. And you'll provide that to us and to counsel by five or six this afternoon.

Mr. STEWART. Yes, sir.

The CHAIRMAN. And I am not cutting it off at that, you understand.

Mr. STEWART. I understand.

The CHAIRMAN. What are the chances of proffer summation of testimony from any of those witnesses?

Mr. STEWART. Well, I am presenting, I'd think, at least five witnesses by stipulated testimony or affidavit or proffered summations, and we are doing that to tighten up the presentation. These other witnesses—and we may decide to shorten the list some; we are obviously sensitive to the time constraints that are here, but you know, we've got to make our case.

The CHAIRMAN. I certainly understand that, and I appreciate your understanding on behalf of the panel. We have had very good attendance on behalf of the panel, which is extremely important since, as Judge Nixon knows, each of us has to make up our own individual minds, and this is not a question of a vote of the committee.

But I do think—and I hope it is not out-of-character to say—that there has been substantial testimony already elicited as to the reputation of good character of Judge Nixon by almost all the witnesses called by the House. And it would seem that especially in light of that, a parade of witnesses attesting to Judge Nixon's reputation for good character and exemplary conduct on the bench is not necessary.

I would be glad to accept any and all stipulations and depositions and affidavits and the whole works, but I think that Judge Nixon will not be helped by a day-long parade of character witnesses. But that is not in any way to be construed as a heavy hand; if he wants us to hear them, he has every right for them to be heard live.

Mr. STEWART. I don't think it will be a day-long parade, and we understand the Chair's concerns.

The CHAIRMAN. Mr. Danforth.

The VICE CHAIRMAN. Mr. Stewart, let me just ask you a question relating to a personal scheduling problem. The leadership has scheduled a matter to come to the floor of the Senate on Wednesday afternoon in which I have a very great stake. I take it Wednesday afternoon is going to be a crucial time as far as your case is concerned.

Mr. STEWART. If we are lucky on Tuesday we'll get Judge Nixon on at the end of the day. If not, I would expect him to come on on Wednesday. That is my hope.

The CHAIRMAN. Well, I say to my colleague and vice chairman as well as to other members of the panel, when we get to Judge Nixon's testimony, regardless of when that is, we will make every arrangement that all members of the panel can be present, and if that takes delaying his testimony because of the workings of the floor, then we will certainly accommodate that.

Mr. EDWARDS. Mr. Chairman.

The CHAIRMAN. Yes, Mr. Edwards.

Mr. EDWARDS. The House of Representatives on Tuesday, some time after noon, will be considering under suspension the statute dealing with the American flag, and I am sure that all of the members who are managers would like to be gone for about an hour then because that's as long as it will take, I believe.

The CHAIRMAN. Well, we will make that arrangement, certainly, Mr. Edwards and all Members of Congress.

I wanted to save my speech of thanks until the end, but we have come far, and I think we have various views as to how much testimony is relevant and how much is not, of course. But I appreciate the precision and conciseness of the managers in the presentation of the case. I think the cross-examination has been thorough if not exhaustive, and I hope that, of course, without any artificial time constraints, it seems to me that we ought to be able to finish this case sometime no later than Thursday afternoon, with everything—final arguments, if we want to have those—everything. But a lot of that now switches over to Judge Nixon and his counsel, and he has every right to present every witness that he wishes, subject only to relevance, and I will continue to try to make some sort of judgment on the question of relevance or redundancy.

And let's just do our best, when the House has an important matter, if they need to be gone an hour and all the managers have to be gone, of course, we are going to stop; the same question here with the Senate. We have been lucky because we haven't gotten geared up, but we will have a few conflicts next Thursday, Wednesday, and Thursday. But let's just all try out best to finish this thing on Thursday. To go over a week, to have to wait another week, is not going to be helpful to anybody to string this out as attention flags.

Nine-thirty Tuesday morning.

[Whereupon, at 3:52 p.m., the committee was adjourned, to reconvene Tuesday, September 12, 1989, at 9:30 a.m.]

IMPEACHMENT TRIAL OF JUDGE WALTER L. NIXON, JR.

TUESDAY, SEPTEMBER 12, 1989

U.S. SENATE,
IMPEACHMENT TRIAL COMMITTEE,
Washington, DC.

The committee met, pursuant to notice, at 9:38 a.m., in room SH-216, Hart Senate Office Building, Hon. Wyche Fowler, Jr., chairman of the committee, presiding.

Members Present: Senators Fowler (chairman), Danforth (vice chairman), Heflin, Wirth, Reid, Robb, Kohl, Chafee, Jeffords, Murkowski, Mack, and Symms.

House Managers present: Mr. Edwards, Mr. Cardin, and Mr. Sensenbrenner.

Counsel Present: David O. Stewart, Peter M. Brody and Michael B. Holleman, counsel for Judge Nixon; Morgan Frankel, Assistant Senate Legal Counsel; and Donald A. Purdy, Jr., counsel for the Senate Impeachment Trial Committee; Alan I. Baron, special counsel, House of Representatives; Peter E. Keith, assistant special counsel, House of Representatives.

Staff Present: Anthony L. Harvey, administrator, Senate Impeachment Trial Committee; P. Casey McGannon, staff assistant, Senate Impeachment Trial Committee; Isabel McVeigh, staff assistant, Senate Impeachment Trial Committee.

The CHAIRMAN. Good morning, everybody. We will resume the matter of the impeachment of Judge Walter L. Nixon, Jr.

Mr. Stewart, you may present the case for Judge Nixon.

Mr. STEWART. Thank you, Mr. Chairman.

Before we call our first witness, I wanted to take about 5 minutes and run through some of the stipulated testimony and the prior testimony in the record that we'll be relying on relating to witnesses who we are not going to call here today. I do want to bring these matters to the attention of the committee, and for the benefit of those Senators who are not here with respect to the videotape, to highlight these points, if I might. It will just take a few minutes.

The CHAIRMAN. That will be fine.

Mr. STEWART. First, though, there's a housekeeping matter. We have raised a question about the transcript of the tape of the grand jury that is House Managers Exhibit 2. I was here for an hour yesterday trying to play the tape in such a way that people could hear it. We fiddled with the controls. It is a very poor quality tape. It sounds like mud when you play it over the PA system. We have a disagreement as to that particular sentence, and there is no solu-

tion for it except for the Senators to listen to it. I don't believe playing it in this room is going to help. It may turn out not to be a material point anyway, but I wanted to tell you that we had attempted to find a way to resolve that. And I can't do it in this room.

The CHAIRMAN. Well, why don't we hold that until the conclusion of your case, including the testimony of Judge Nixon?

Mr. KEITH. Fine.

The CHAIRMAN. And then you can make your request. And if necessary, we will hear it in a room where it can be heard.

Mr. STEWART. OK. The first witness I wanted to mention is a fellow named John Baltar. In my opening statement, I told you we would call him. Based on the progress in this hearing, we've resolved not to actually bring him here because he did testify fully at the post-conviction hearing.

It's important testimony for a couple of points. First, he does establish that Mr. Fairchild, Wiley Fairchild, changed his testimony when he made his deal with the Federal Government and he adopted new dates for certain events. And those new dates and a particular point he changed his testimony on were consistent with the prosecutor's theory. This is found in the post-conviction hearing at pages 31 to 56 of that transcript.

You'll also find exhibit 37, which is Respondent's exhibit 37, which is a chronology. It's essentially a script that was prepared for Mr. Fairchild by Mr. Baltar on the instructions of the prosecutor. We have found this same document—and Mr. Baltar identified this as being in his handwriting. We have found this document in the Government files, in the Justice Department files, while we were preparing for this hearing. So there's no question that the Justice Department was involved in that process.

The point here is simply on the question of the date and on the question of who placed the call. Mr. Fairchild was, through pressure or however it happened, induced to change his testimony. And it's important also to realize that at the post-conviction hearing last year, Mr. Fairchild confirmed that that's what he did. That appears on pages 193 to 214 of that transcript.

Now, when Mr. Fairchild appeared here the other day, on Thursday, he professed to have a complete lack of recollection of anything related to these events. As you may understand, a lack of recollection like that, if it's asserted, is a little difficult to deal with. But that is in the record now as to his view at this point. But I want to emphasize what his testimony was a year ago.

Now, on the question of who placed the call, Mr. Baltar's testimony is reinforced by the grand jury testimony of a man named Karl Kepper.

Senator CHAFEE. Now, wait a minute. What call are we talking about? The one from the farm?

Mr. STEWART. Yes, sir.

Senator MACK. Mr. Chairman, I wonder if before we go to Karl if we could go back to the date for a second.

Mr. STEWART. Yes, sir.

Senator MACK. I realize that you've given us some places in the materials that have been presented that we can look this up, but

would you mind just going through what these changes were that were made in Mr. Fairchild—

Mr. STEWART. Certainly. There were basically three. The first related to when Carroll Ingram approached Judge Nixon—when Carroll Ingram approached Wiley Fairchild—excuse me, I mis-spoke—concerning a possible investment for Judge Nixon. When Mr. Fairchild first recalled the incident, he said it was in late 1979 or early 1980. Mr. Baltar's recollection was that when they went to the prosecutor, the prosecutor said no, it had to be after the bust. That's the only thing that makes sense. Mr. Fairchild said, "Yeah, I guess it was after the bust," which is August 1980. And then when you get to that script, it's provided for him that there are arrows drawn in there in the side. The original had yellow highlighting—that's in the court records; I don't have it—that this is where he's supposed to put it.

The second point, of course, was the date of the phone call itself, and here he was given—on page 2, Mr. Baltar said he originally didn't say it was before the case passed to the files or not. He just related it to this visit from Bob Royals. But on the script here—excuse me, I'm skipping—the prosecutor told him, "Wait a second. That only makes sense if it was right before the case was passed to the files." So in the script here, it appears with these arrows between these two dates, October 12th and December 23rd.

The third point was who placed the call. Was it from Bud Holmes or Judge Nixon? It's not a pivotal point in any objective view of the case. It became pivotal at trial through the weird alchemy of trial proceedings. And, again, Mr. Baltar recalled that Mr. Fairchild first said that the call came from Bud Holmes, Judge Nixon thereafter got on the phone, and then he changed that story when he was in his negotiations with the prosecutor.

The CHAIRMAN. All right. Mr. Stewart, I know you're responding to Mr. Mack's question, but let me say to you and to the panel, I think the best way of handling this is not to argue your case right now—I know you were trying to respond—but to give us the cites so we can read the material. We all copy those down, all in the testimony that Mr. Baltar would have made. And then Mr. Mack and others, he'll be able to argue this in his summation and fit all of this testimony together in his construction of the case. And let's get to the live witnesses.

Mr. STEWART. Fine.

The second witness I wanted to mention is a man named Karl Kepper, who was one of Wiley Fairchild's lawyers. Mr. Kepper is ill. He is unable to be here, but he did give the grand jury a testimony which we did not have at trial and did not get until this proceeding. And it's been stipulated that it's admissible here.

On exhibit 47, at page 10, Mr. Kepper recalls when Mr. Fairchild first told him about the phone call. This is before he makes the deal with the prosecutors. At page 10 he says, and I quote:

He said—

Referring to Wiley—

"Bud Holmes called me one night about 7:00 or 7:30 and told me that everything was going to be all right. You know, I talked to the man, and he said, 'Everything is going to be all right. You don't have to worry about your boy.'"

He said that about that time it sounded like Judge Nixon got on the phone. He said he heard this voice, and it sounded like Judge Nixon's voice, and he said, "Yes, I talked with Bud, and everything is all right. You just quit worrying about all this. It will be taken care of, and you just don't worry about it."

So, again, that reinforces Mr. Baltar's recollection.

Now, we have just submitted as new number exhibit 77—this is a third witness, now—Mr. Rodney Fairchild's affidavit which was provided pursuant to stipulation with the House managers. Mr. Rodney Fairchild was present when Judge Nixon arrived at Mr. Fairchild's office that afternoon, and he states here—it's just a few sentences:

I recall at least one occasion, possibly two, when Judge Walter Nixon visited in Wiley's office. I recall one specific occasion in which we exchanged greetings and pleasantries, after which I left the room and did not hear the conversation between Judge Nixon and Wiley. The next morning, Wiley told me that he had had a conversation with Judge Nixon and had told Judge Nixon that he thought he was being blackmailed concerning Drew's case. I do not remember Wiley's specific words, but he gave me the impression that he was pleased about his talk with Judge Nixon. To the best of my recollection, I associate this event as occurring at about the time of publicity concerning Drew's case being passed to the file in Circuit Court of Forrest County, although I do not specifically remember if this event was before or after the case was passed to the files.

Again, that reinforces the recollection concerning blackmail, also the rough timing of the call.

He referred to publicity there, and I wanted to mention one other witness who did address this publicity issue, because several of the witnesses associate this event with the publicity that occurred. In exhibit 76, we have a stipulation of witness testimony. One of the stipulations refers to Ms. Betty Lou Watkins. She is Judge Nixon's secretary. We asked her to review all of the issues of two newspapers, the two newspapers that circulate in Hattiesburg, between August 1980 and April 1983 to find publicity about the Drew Fairchild drug case. As Mr. Fairchild has testified here, that was important; that triggered this.

She determined that there was no publicity, no newspaper story about the Drew Fairchild drug case between January 1982 and January 1983.

The CHAIRMAN. Where is that cite? Where is that exhibit?

Mr. STEWART. It is exhibit 76. And she's the first witness referred to there. We have included as exhibits in our materials all of the newspaper stories she did find, and I don't have the numbers for those. They're spread throughout.

Our view there, of course, is that for anyone to be upset about the publicity, then it would have to have been after January 1983 when the publicity about passing the case to the files happened.

A final witness I wanted to mention, and concededly this is not squarely relevant to the false statement, but it does relate to questions the Senators have been asking, so I think I ought to bring it to the panel's attention. It is our exhibits 68 and 68A. That's a letter from a Professor Geoffrey Hazard of Yale Law School. Mr. Hazard is really the leading expert on legal and judicial ethics in this country. He was the reporter or draftsman of the ABA Code of Model Rules of Professional Responsibility and also the Code of Judicial Conduct.

Because we got questions on the House side similar to the questions we had here this last week concerning whether there was impropriety in these transactions, even if no illegality, we asked Mr. Hazard to look at those facts—we provided him with a set of stated facts—and to comment on them to see if he found any impropriety. His letter is exhibit 68A, and I would like to read a couple of passages.

It says that:

Canon 2B of the Code of Judicial Conduct provides that a judge should not lend the prestige of his office to advance the private interests of others, nor should he convey or permit others to convey the impression that they are in a special position to influence him. In the circumstances of this case, I believe Judge Nixon's act of relating Wiley Fairchild's blackmail allegation to Bud Holmes should not be held to constitute lending the prestige of his judicial office to a private interest. The prosecution of Drew Fairchild was a State court matter to which Judge Nixon had no official connection. Judge Nixon apparently was approached by Wiley Fairchild on a personal basis because he was a long-time friend of Bud Holmes, not because he was a Federal judge. Judge Nixon evidently spoke to Holmes on the same basis. What Judge Nixon was lending to appears to have been his position as a long-standing friend and professional colleague of Bud Holmes and not the prestige of his judicial office. As a State prosecutor, Holmes had no matters pending before Judge Nixon, and normally he would understand the judge's remark as having been made as a personal friend. Judge Nixon's actions would not allow others to convey the impression that they could influence him in his judicial office since the events did not involve any of his judicial duties.

"My opinion that there was no violation of Canon 2B is reinforced by the context of law practice in less urban parts of the country, such as the Southern District of Mississippi. In those areas, social and personal relations between lawyers and judges and between them and non-lawyer acquaintances tend to be more intimate, relaxed, and informal than they are in larger metropolitan areas. In a more urban setting, a judge might simply decline to hear out Wiley Fairchild's initial grievance or to mention it to Bud Holmes. But in a face-to-face community, Judge Nixon's handling of the matter seems unremarkable. Accordingly, there is little basis for an impression that Wiley Fairchild was in a special position to influence Judge Nixon. For all of these reasons, my opinion is that Judge Nixon did not violate Canon 2B.

He also gave an opinion concerning the loan, whether that was proper. I'm not going to read that. I don't want to take too much of the committee's time on this.

He also was asked about Canon 5C(1)—I just have two more passages, Mr. Chairman—which provides that:

A judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, exploit his judicial position, or involve him in frequent transactions with lawyers or persons likely to come before the court on which he serves. In my opinion, nothing in the factual recitation above would violate this canon. Judge Nixon's investment had no apparent connection to any judicial duties or matters before him. The limited role of Attorney Carroll Ingram in the investment arrangements did not, in my view, place Judge Nixon in frequent transactions with Ingram so as to violate the canon.

The last issue, we asked Professor Hazard also to assume Bud Holmes' version of this event. Assume that what Mr. Holmes said was true, that Judge Nixon told him that Wiley had asked him to put in a good word for his boy, and that Mr. Holmes volunteered, "Heck, I'll pass the case to the files." So we asked Mr. Hazard to assume those facts and still look at the ethical issue.

He writes—and this is the last passage I'll read—

This alternative version of events does not alter my conclusion concerning the loan to Judge Nixon under Canon 5C(4)(c). With respect to the application of Canon 2B, my opinion remains that no ethical violation is present. When Judge Nixon spoke with Holmes, he spoke about a State court matter with an old friend and not

in a context in which he could be understood to be lending his judicial office to further a private interest. Holmes' suggestion that he could pass the case to the files was neither requested nor invited by Judge Nixon. Moreover, the long delay between the conversation and Holmes' act of passing the case to the files leads me to question whether the conversation with Judge Nixon properly may be characterized as a cause of Holmes' passing of the case to the files. That long delay, combined with the existence of an immediate cause for the passing of the case to the files, the complaints of Bill Porter in December 1982, leads me to conclude that Judge Nixon's actions did not convey or permit others to convey that they were in a special—

There's a typo here of some kind, a word left out—

Under Canon 2B. In addition, the disposition of the Drew Fairchild case in State court would not reflect directly or indirectly upon anyone's ability to influence Judge Nixon in his judicial matters.

With that I conclude, and I would encourage the members of the panel to look at Professor Hazard's opinion on this matter. We'll call our first witness. Mr. Brody will call our first witness today.

The CHAIRMAN. Thank you, Mr. Stewart.

Mr. BRODY. Respondent will call Walter Eppes.

The CHAIRMAN. Mr. Eppes, good morning.

Mr. EPPES. Good morning, sir.

The CHAIRMAN. May I administer the oath to you?

Mr. EPPES. I've been through this before.

The CHAIRMAN. Do you, Mr. Walter Eppes, swear or affirm that the evidence you shall give in the case now pending between the United States and Judge Walter L. Nixon, Jr., shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. EPPES. I do.

The CHAIRMAN. Thank you, Mr. Eppes. Have a seat. Welcome.

Mr. BRODY. Good morning, Mr. Eppes.

TESTIMONY OF WALTER W. EPPES, JR.

DIRECT EXAMINATION

Mr. EPPES. Good morning.

Mr. BRODY. Would you state your name and spell it for the record, please?

Mr. EPPES. My name is Walter W. Eppes, E-p-p-e-s, Jr. I live in Meridian, Mississippi.

Mr. BRODY. What is your occupation, sir?

Mr. EPPES. I'm an attorney in the city of Meridian.

Mr. BRODY. What is your educational background?

Mr. EPPES. Meridian High School, Meridian Municipal Junior College, the University of Alabama, the University of Mississippi, law degree in 1952.

Mr. BRODY. Could you tell the panel a little bit about your practice and your career?

Mr. EPPES. Well, after finishing the University of Mississippi Law School, I came back to Meridian and worked with an insurance company for a couple of years, and then I entered into private practice. And over a period of time, my practice became more and more defense-oriented, representing corporations and insurance companies. I've been there continuously since 1952. I do a general civil trial practice.

Mr. BRODY. If you can, estimate what proportion of your practice is in the Mississippi courts.

Mr. EPPES. Well, virtually all. There was a time when I did some work in Alabama, but never understanding the pleading over there very well, I stopped it.

Mr. BRODY. Mr. Eppes, have you held any leadership or office positions in any professional organizations?

Mr. EPPES. Yes, I have. I have been through the chairs of my State Bar Association for a period of years, and I served as president of the Mississippi State Bar during the year 1985 to 1986, when most of this went on.

The CHAIRMAN. I think his bona fides are established, counsel.

Mr. BRODY. Thank you.

Mr. Eppes, do you know Walter Nixon?

Mr. EPPES. Oh, yes.

Mr. BRODY. How did you first come to know Mr. Nixon?

Mr. EPPES. Well, Judge Nixon was a very able trial lawyer. He ordinarily represented the plaintiff in Biloxi, Mississippi, and he was having a great amount of success. And some of my clients wanted me to leave my home in Meridian, Mississippi, and go to Biloxi and see if I couldn't stop him some.

Mr. BRODY. Did you litigate cases with him?

Mr. EPPES. Well, we worked on a number of them through the discovery process, but before we could get to trial, he became invested as my district judge.

Mr. BRODY. Have you had further contact with him since that time?

Mr. EPPES. Since his investiture?

Mr. BRODY. Yes.

Mr. EPPES. Oh, many times.

Mr. BRODY. Could you describe the nature of that contact?

Mr. EPPES. Well, of course, as an officer in his court, I appeared before him many times. I was asked how many cases I had tried before him, both bench trials and jury trials, and it would be my best guess that would be 75 or 100. But I probably had another 150 or 200 before, where I appeared before him at one time because of this terrible asbestos litigation. I was in front of him representing the defendant in 3,600 cases at one time. I've been before Judge Nixon many times.

Mr. BRODY. And do you have an opinion as to Judge Nixon's character for truthfulness and veracity?

Mr. EPPES. Oh, I certainly do.

Mr. BRODY. What is that opinion, sir?

Mr. EPPES. It is superb with me.

Mr. BRODY. Do you know whether your opinion is shared by others in the legal community?

Mr. EPPES. Well, I think the vast majority of lawyers that I work with on a day-to-day basis have the highest regard for Judge Walter Nixon.

Mr. BRODY. Do you have an opinion as to other aspects of his character and conduct as a judge?

Mr. EPPES. Well, some of his personal characteristics, counsel, is that the issue?

Mr. BRODY. His characteristics as a judge, yes.

Mr. EPPES. He's a quiet man. He's shy until you come to know him. He's a very kind man, I think, particularly if you become acquainted with him. I can personally attest to a horrible operation I had, and I think he called nearly every day to see if I was going to be all right.

Mr. BRODY. And with respect to his conduct on the bench, can you offer us any other characterization of his conduct?

Mr. EPPES. Well, he's as good as I've ever worked for, with the possible exception of Judge Seybourn Lynne in Birmingham, Alabama, who's a much older man. He's got a knack that few judges have of being able to hear both sides in the privacy of chambers argue their case, and then come to a reasonably—a good recommendation of settlement. And he has an inordinate way of getting to—getting rid of the extraneous matters and finding your long points and finding your dangers and making a recommendation. He's had to do that because of the fact that we have the most congested docket in America.

Mr. BRODY. And, again, are you aware whether your opinion of these other aspects of his character and conduct as a judge are shared by others in the legal community?

Mr. EPPES. In my opinion, by the large majority. There are some that feel that he was too dictatorial as a judge and a little bit stiff, but those of us that worked with him day in and day out for years, no, sir. He has our support.

Mr. BRODY. Mr. Eppes, has the jury verdict in Judge Nixon's case affected your opinion of him?

Mr. EPPES. I'm aware that it exists, but it hasn't affected my opinion of this man.

Mr. BRODY. Why not?

Mr. EPPES. I've been with him a lot of times. The only dishonest remark I think he ever made to me was how big the fish was he caught.

Mr. BRODY. Thank you. I have no further questions for this witness.

The CHAIRMAN. The House may inquire.

CROSS EXAMINATION

Mr. BARON. Good morning, Mr. Eppes. I'm Alan Baron. I'm counsel to the House——

Mr. EPPES. Baron?

Mr. BARON. Baron, yes.

Mr. EPPES. Good morning, sir.

Mr. BARON. Good morning. I'm counsel to the House of Representatives in these proceedings.

I'd like to ask you, Mr. Eppes, first, have you read the Articles of Impeachment that are at issue here?

Mr. EPPES. No.

Mr. BARON. And may I take it that you don't have any firsthand knowledge of the facts that have been elicited in connection with this case?

Mr. EPPES. No. Mr. Baron, at one time, I read the testimony of Mr. Holmes as I heard oral argument in the Fifth Circuit Court of Appeals, and that would be the extent of it.

Mr. BARON. OK. My question, though, was really your firsthand knowledge. You wouldn't have any?

Mr. EPPES. Oh, no, sir.

Mr. BARON. I didn't think so.

Mr. EPPES. Zero.

Mr. BARON. Mr. Eppes, if the facts established that Judge Nixon had, in fact, made a false statement to the grand jury, or that he had made false statements to the Federal investigators who interviewed him, would that change your opinion of his character?

Mr. EPPES. Mr. Baron, I wouldn't quarrel with you, but I'd have to know more background than you've given me. I would find it difficult to believe that Judge Nixon lied. If you tell me definitively and absolutely he did lie, of course I would be chagrined and very surprised.

Mr. BARON. No further questions.

The CHAIRMAN. Call your next witness.

Senator HEFLIN. Could I ask one question?

The CHAIRMAN. Go ahead.

EXAMINATION BY THE COMMITTEE

Senator HEFLIN. I'm sort of out of the practice of law for a long time, but on the basis of character witness, is it still in the rules and in the Federal Rules that a character witness testifies as to the character prior to the event that the person is charged with?

Mr. EPPES. I think that's a correct statement. It's the truth, veracity of the witness at the time and place prior to the incident involved.

Senator HEFLIN. Thank you.

Mr. EPPES. That's the relevant part, is what I understand it, Senator Hefflin.

The CHAIRMAN. Senator Danforth.

The VICE CHAIRMAN. Mr. Eppes, would you characterize Judge Nixon as being a careful and precise person, a man who chooses his words with care? Or would you characterize him as a person who is sometimes given to overstatement and exaggeration?

Mr. EPPES. Not the latter, Senator. He is an articulate person. He speaks well, and his opinions are a work of art. He knows what he's saying. There are times when—I don't know whether you wish me to say this or not—that his hearing has not been quite as good as I thought it was as a result of a problem he had at one time.

The VICE CHAIRMAN. Would you say that he is a person with an even temper who is able to deal with difficult situations without flying off the handle? Is he a person of generally cool and even demeanor, or is he a person who sometimes has a temper and perhaps says things that he doesn't mean?

Mr. EPPES. No, sir. I've worked with Judge Nixon in a trial where there were 50 lawyers participating and it went 30 days. I never saw any temper of any kind flare up at all.

The CHAIRMAN. Any other questions from the panel? Mr. Murkowski.

Senator MURKOWSKI. I wonder if the witness could comment briefly on any knowledge concerning Judge Nixon's investments or

interest in investments or making money outside of being a Federal judge.

Mr. EPPES. Senator, I have no knowledge of it other than what I've read in the paper he bought some oil interests at some time. And that's really all that I know, and that's not uncommon. There's a lot of us that have tried to get involved in investment in oil as it came to our State, and some of us are sorry we did and I'm one of them.

Senator MURKOWSKI. But you were aware he did at least generate an interest in acquiring some investments in oil and gas leases?

Mr. EPPES. From the newspapers, yes, sir.

Senator MURKOWSKI. Thank you.

The CHAIRMAN. Call your next witness.

Mr. EPPES. May I be excused to return home?

The CHAIRMAN. No objections. You may. Thank you, Mr. Eppes, very much.

Mr. EPPES. Thank you, gentlemen.

[Witness excused.]

Mr. BRODY. Respondents call Mr. Will Denton.

The CHAIRMAN. Mr. Denton, good morning. Would you stand and raise your hand? Do you, Will Denton, swear or affirm that the evidence you shall give in the case now pending between the United States and Judge Walter L. Nixon, Jr., shall be the truth, the whole truth, and nothing but the truth?

Mr. DENTON. I do.

The CHAIRMAN. Thank you, Mr. Denton. Good morning.

Mr. BRODY. Good morning, sir.

TESTIMONY OF WILLIAM L. DENTON

DIRECT EXAMINATION

Mr. DENTON. Good morning.

Mr. BRODY. Could you state your full name and spell it for the record, please?

Mr. DENTON. William L. Denton, W-i-l-l-i-a-m, middle initial L, D-e-n-t-o-n.

The CHAIRMAN. Pull that microphone up a little closer, Mr. Denton. Thank you.

Mr. DENTON. Thank you.

Mr. BRODY. Where do you live, Mr. Denton?

Mr. DENTON. Biloxi, Mississippi.

Mr. BRODY. How long have you lived there?

Mr. DENTON. I've been in Biloxi 20 years.

Mr. BRODY. What is your current occupation?

Mr. DENTON. Lawyer.

Mr. BRODY. How long have you been an attorney?

Mr. DENTON. Since August 1965.

Mr. BRODY. And how much of that time has been spent as an attorney in Mississippi?

Mr. DENTON. All of that time except three years during which period of time I was a judge-advocate for the United States Air Force.

Mr. BRODY. Mr. Denton, have you or do you now hold any leadership positions in any professional organizations?

Mr. DENTON. Yes. I'm currently president of the Mississippi Trial Lawyers Association.

Mr. BRODY. Do you know Judge Walter Nixon?

Mr. DENTON. I do.

Mr. BRODY. How did you come to know Judge Nixon?

Mr. DENTON. I came to know Judge Nixon in the very early '70's as my trial practice began to develop in Federal court in Biloxi.

Mr. BRODY. And did you appear before him as a litigant?

Mr. DENTON. On many occasions.

Mr. BRODY. How frequently or how many times have you appeared before him on behalf of a client?

Mr. DENTON. That would be—that's difficult to answer. I've probably been before Judge Nixon on motion hearings, conferences, and trials 50-plus times.

Mr. BRODY. All right. Mr. Denton, do you have an opinion as to Judge Nixon's character for truthfulness and veracity?

Mr. DENTON. I do.

Mr. BRODY. And what is that opinion?

Mr. DENTON. His reputation for truthfulness and veracity is excellent.

Mr. BRODY. And are you aware whether your opinion is shared by others in the legal community?

Mr. DENTON. It certainly is. May I expound on my answer?

Mr. BRODY. Please do.

Mr. DENTON. When I began to practice in Federal court, my practice was roughly divided 50-50 between personal injury work and insurance bad faith. More and more of my cases fell in Federal court because of the diversity of the citizenship thing. I became aware early on that the Southern District of Mississippi had a tremendous backlog of cases in the early '70's. And Judge Nixon was at the very forefront of trying to eliminate this backlog, and the way he did it was through multiple conferences with opposing counsel, settlement conferences. And I appeared before him in those conferences on many, many occasions. I can tell this panel that he was very successful with those conferences in moving cases, and the only way that a judge could be that successful in moving cases is by getting both defense lawyers and plaintiffs' lawyers to agree. And a judge's integrity and his reputation for truthfulness is on the line every day in those conferences. If that ever waned or ever became suspect, the lawyers simply wouldn't follow his recommendations.

But I can tell you that on both sides of the bar, both the defense bar and the plaintiff's bar, his reputation for truthfulness is excellent.

Mr. BRODY. And with respect to other qualities that he may have exhibited on the bench, could you offer us an opinion about those?

Mr. DENTON. Well, to a young attorney, the most immediate quality that Judge Nixon possesses is his command for respect. Put another way, I was scared to death of Judge Nixon and his court for the simple reason that I knew that he did not tolerate lack of preparedness, nor did he tolerate any light approach to the cases that were before him. So at the very beginning, I learned, as did the other lawyers, that when you file cases in Judge Nixon's court,

you ought to be relatively sure of its merits and you'd better be prepared.

Consequently, Judge Nixon's cases as they moved through the process, those that went to trial, were attended I think with the greatest of care by him and skill from the bench. So, consequently, he had few, if any, cases that I'm aware of reversed by the Fifth Circuit. I remember one stat several years ago that said that he was the second least reversed Federal judge in Mississippi, the least reversed judge being Judge Keady, who is now deceased, in the Northern District.

The VICE CHAIRMAN. Could I just interrupt, counsel? We're really not interested particularly in the reversal rate of Judge Nixon's cases but, rather, in questions of character.

Mr. BRODY. I understand. Thank you, Senator.

Mr. Denton, with respect to the opinion you've given us about his character and conduct as a Federal judge, are you aware whether your opinion is shared by others in the legal community?

Mr. DENTON. Yes, I am. My opinion is widely shared by other lawyers on both sides of the bench and of the bar, both on the defense side and the plaintiff side. Senator, with regard to the issue of Judge Nixon's reversal, I just merely add that judges who are not fair and unbiased in the courtroom are pretty soon found out in print on appeal. And Judge Nixon's transcripts never evidence any bias one way or another to give any appeal court any reason to send his cases back.

Mr. BRODY. Mr. Denton, has the jury verdict affected your opinion of Judge Nixon?

Mr. DENTON. Yes, it has. I believe more strongly in this man now than I did prior to this conviction, because I watched the load that he shouldered and watched his fight for justice. I hope it will be obtained here.

Mr. BRODY. No other questions.

The VICE CHAIRMAN. Does the House have questions?

Mr. KEITH. Yes, Senator, just briefly.

CROSS EXAMINATION

Good morning, Mr. Denton. My name's Peter Keith. I'm one of the attorneys for the House of Representatives.

Mr. DENTON. Good morning.

Mr. KEITH. Mr. Denton, have you read the Articles of Impeachment that are at issue before this committee?

Mr. DENTON. I believe I have on one occasion.

Mr. KEITH. Do you have any firsthand knowledge of any facts that are pertinent to any of the statements that are at issue in the Articles of Impeachment?

Mr. DENTON. I don't have any firsthand knowledge, meaning I was not present at any of the—on any of the occasions contemplated, I don't believe.

Mr. KEITH. So, for example, with regard to Judge Nixon's statement to Federal investigators that nothing was ever mentioned about Wiley Fairchild's son, you have no knowledge as to whether that statement is true or false; is that correct?

Mr. DENTON. I don't have any direct knowledge. I can tell you that having been before Judge Nixon as many times as I was before him, I believe that he spoke the truth when he made that statement. And let me just say this: I'm not sure how it works in Washington or in other parts of the country, but in the deep south, if you were asked if you discussed a case, that would carry some pretty heavy meaning, like: Did you try to influence the outcome? And I think Judge Nixon answered truthfully to that. Based on what I know about this, he did not try to influence the outcome, and merely mentioning a case would not have anything to do with the improper influencing of the outcome of the case.

Mr. KEITH. Well, Mr. Denton, the statement that I had asked you about was Judge Nixon's statement that nothing was ever mentioned about Wiley Fairchild's son.

Mr. BRODY. Mr. Vice Chairman, I'm going to object. I think this is argumentative.

The VICE CHAIRMAN. Overruled.

Mr. KEITH. Again, Mr. Denton, can you shed any light, either from your personal knowledge or from your familiarity with language in Mississippi, as to the truth or falsity of that statement, sir?

Mr. DENTON. Not from firsthand knowledge. I can simply say this: If the judge said he didn't discuss it or didn't attempt to influence the outcome of it or did not mention it, I believe he was telling the truth.

Mr. KEITH. That's all I have. Thank you, sir.

The CHAIRMAN. Any questions from the panel? Mr. Danforth.

EXAMINATION BY THE COMMITTEE

The VICE CHAIRMAN. Would you, on the basis of your knowledge of Judge Nixon, characterize him as being a person who chooses his words carefully and with precision? Or is he a person who is given to overstatements or exaggerations or imprecise statements of fact?

Mr. DENTON. No, I would not characterize Judge Nixon as one who chooses his words carelessly.

The VICE CHAIRMAN. Would you say that he chooses them with precision?

Mr. DENTON. When he's addressed me, he has.

The VICE CHAIRMAN. Would you describe his temper as being one of being cool under fire and in control in difficult situations? Or does he tend to show his temper and perhaps act in a less controlled way?

Mr. DENTON. Judge Nixon has a judicial temperament.

The VICE CHAIRMAN. Which means what?

Mr. DENTON. Which means at least in the courtroom, where I've been able to observe him, that he is under control.

The CHAIRMAN. The witness is excused. Thank you very much, Mr. Denton.

Mr. DENTON. Thank you.

The CHAIRMAN. Mr. Brody.

Mr. BRODY. Respondent calls the Honorable Judge Peter Beer.

The CHAIRMAN. Judge Beer, good morning.

Judge BEER. Good morning, Senator.

The CHAIRMAN. Would you raise your right hand? Do you, Peter Beer, swear or affirm that the evidence you shall give in the case now pending between the United States and Judge Walter L. Nixon, Jr., shall be the truth, the whole truth, and nothing but the truth, so help you God?

Judge BEER. So help me God.

The CHAIRMAN. Welcome, Your Honor.

Judge BEER. Thank you.

Mr. BRODY. Good morning, Judge BEER.

TESTIMONY OF JUDGE PETER BEER

DIRECT EXAMINATION

Judge BEER. Good morning.

Mr. BRODY. Could you state your full name for the record, please?

Judge BEER. Peter Beer.

Mr. BRODY. Where do you live, Judge Beer?

Judge BEER. In New Orleans.

The CHAIRMAN. Judge Beer, pull that microphone up close to you.

Judge BEER. In New Orleans.

Mr. BRODY. And you are a judge?

Judge BEER. United States District Judge for the Eastern District of Louisiana.

Mr. BRODY. How long have you held that position?

Judge BEER. Ten years.

Mr. BRODY. And prior to that, what was your occupation?

Judge BEER. I was a judge of the Louisiana Court of Appeals.

Mr. BRODY. Do you know Judge Walter Nixon?

Judge BEER. Yes, sir.

Mr. BRODY. How did you come to know Judge Nixon?

Judge BEER. Walter and I were in law school at Tulane University at the same time, and we knew each other then.

Mr. BRODY. Have you had any further contacts with him since that time?

Judge BEER. Yes, sir. A number of contacts.

Mr. BRODY. Could you describe those?

Judge BEER. We were at Tulane at the time that the Korean War was on, and the classes were jumbled so there wasn't really a distinction between classes. I'm not sure whether we were in the same class or not. But we knew each other at law school.

Then when I got out of the Air Force, I came back to practice in New Orleans and was doing the kind of work that put me at times in contact with Walter. We had some cases against each other. Over that span of time, we litigated, sometimes on opposite sides, managed to stay friends. And then when he went on the—about the time that he went on the district court, the U.S. District Court in the Southern District of Mississippi, I went on the Louisiana Court of Appeal, and our paths crossed again a little bit because of the Mississippi/Louisiana Bar Association relationships, et cetera.

Mr. BRODY. Since the time that you were invested as a Federal judge, have you had any further contact with Judge Nixon?

Judge BEER. Right. That's—by far, the bulk of the contact that we had with each other has been in the period since I became a district judge in 1979. By reason of the fairly close association between the court that I work on and the court that he works on in terms of providing some help to either court because we're geographically close, the docket situation in the Southern District of Mississippi was such that it pretty much became a situation where we were providing some help for them more than they for us because of the numbers.

Mr. BRODY. Did you actually sit on cases for the Southern District of Mississippi?

Judge BEER. Yes. As some of the judges—I'm sorry. As some of the Senators recall, before the Fifth Circuit was split up to the Fifth and the Eleventh, the Fifth Circuit—the chief judge of the Fifth Circuit had requested help from nearby district courts in terms of helping out with the docket in the Southern District of Mississippi, and that's when I first really had a fairly close and pretty much a continuum as far as a relationship with Judge Nixon's concerned.

Mr. BRODY. Judge Beer, do you have an opinion as to Judge Nixon's character for truthfulness and veracity?

Judge BEER. Yes.

Mr. BRODY. What is that opinion?

Judge BEER. I have no qualms at all about being soundly of the opinion that he has those attributes.

Mr. BRODY. And are you aware whether your opinion is shared by others on the bench?

Judge BEER. Yes. I am aware, and it is shared.

Mr. BRODY. Do you have an opinion as to other aspects of Judge Nixon's character and conduct as a judge?

Judge BEER. Yes.

Mr. BRODY. And what is that opinion?

Judge BEER. Well, it started with, really with the effort that he made as chief judge in the Southern District of Mississippi to bring that docket into some—cut the backlog down and the overall handling of it in conjunction with those of us who came over to help in that endeavor. I thought his management of it was excellent. It was a pleasure to participate in it. The judges who came were courteously and helpfully helped out by everybody that came under his jurisdiction. We did manage to get a lot of cases tried or settled, as the case may be. It was always in a totally friendly, yet completely professional way. His management of the docket, his relationship with the people that virtually ran the system was as good, if not better, as I have ever seen in terms of an easy relationship that still netted out a good work product.

We, I guess you'd say, moved a lot of business as a result of his management of how we were used. There were two or three other judges present in the district while I was there, and several others from our court who went and participated in this effort. It was kind of an ongoing effort. The backlog in the Southern District of Mississippi was considerable. There's a history of that. It has nothing to do with Judge Nixon. In fact, his participation in trying to cut it down was manifest, and it was—along with this came a friendly, even-handed effort to make us welcome and to keep us

participating, and it was a very warm-hearted operation that I think everybody that went over and helped out in it had the same—basically the same feeling I did about the work that we were able to help with and about Walter himself.

Mr. BRODY. No further questions.

CROSS EXAMINATION

The CHAIRMAN. Mr. Baron?

Mr. BARON. Good morning, Judge Beer.

Judge BEER. Good morning, sir.

Mr. BARON. I'm Alan Baron. I'm here on behalf of the House of Representatives in these proceedings.

Judge BEER. Yes, sir.

Mr. BARON. Judge Beer, have you had an opportunity to read the three Articles of Impeachment that are before the committee this morning?

Judge BEER. Yes.

Mr. BARON. And so you're aware that there are alleged some 14 false or misleading statements attributed to Judge Nixon.

Judge BEER. Yes.

Mr. BARON. Are you familiar with that?

Judge BEER. I do not—I don't recall that there were 14, but I know that there are several.

Mr. BARON. There won't be a quiz.

Judge BEER. OK.

Mr. BARON. You just remember there were more than just one or two.

Judge BEER. Right.

Mr. BARON. OK. And I take it you don't have any firsthand knowledge concerning the facts pertaining to those allegations? And I mean firsthand knowledge.

Judge BEER. No. I do not have any firsthand knowledge.

Mr. BARON. So you couldn't tell us, for example, whether Judge Nixon's statement that he never talked to anybody about the *Drew Fairchild* case, you have no knowledge as to whether that's true or false?

Judge BEER. You're correct.

Mr. BARON. Now, Judge, you've been on the bench, I think you said for 10 years?

Judge BEER. Well, actually, it goes back longer than that, but I've been a U.S. district judge for 10 years.

Mr. BARON. All right. Let's talk about U.S. district judge. Judge, if it were determined that a Federal judge—put Judge Nixon on the side; I'm doing it in the abstract—

Judge BEER. All right.

Mr. BARON. If it were determined that a Federal judge had given false testimony to a grand jury or false statements to Federal investigators, would you agree with me that that would be inconsistent with the role of a judge in the legal process?

Judge BEER. I might agree with you that that, standing alone, could perhaps be inconsistent. But I'm not willing to subscribe to that premise in terms of these proceedings.

Mr. BARON. I was putting it in a more general sense.

Judge BEER. OK.

Mr. BARON. As I specifically did. Would you agree with me?

Judge BEER. I would certainly agree with you that, absent some explanation or some indications that might be achieved in the course of just this kind of hearing, that if you looked at that on its bare bones proposition that you've put to me, that I'd have to agree with you.

Mr. BARON. No further questions. Thank you.

EXAMINATION BY THE COMMITTEE

The CHAIRMAN. Well, the question in layman's language, we've got a lot of laymen up here on this panel, Judge Beer, not lawyers all.

Judge BEER. Right.

The CHAIRMAN. Is a false statement to a grand jury a violation of your oath of office as a Federal district judge?

Judge BEER. Mr. Chairman, can I answer that in terms of what I perceive to be what's going on here?

The CHAIRMAN. No.

Judge BEER. No?

The CHAIRMAN. With all respect to you.

Judge BEER. All right. Well—

The CHAIRMAN. I'm talking about any—I'm talking about the Federal judiciary. Do you have an obligation to make truthful statements to grand juries under oath, or do you not?

Judge BEER. Well, of course, if you take an oath, you're obliged to follow that oath. I wouldn't quarrel—

The CHAIRMAN. So what's the answer to my question? Would a false statement made to a grand jury by a sitting Federal district judge be a violation of your oath of office?

Mr. STEWART. Mr. Chairman, I'm concerned about this question because we stipulated—

The CHAIRMAN. Overruled.

Mr. STEWART. We stipulated to this.

The CHAIRMAN. Answer the question, please, Judge.

Judge BEER. Senator, I would—the way you've phrased it, I would have to say that any United States officer, whether he be a U.S. Senator or a U.S. district judge, is as obliged as anyone can be to be responsive to his oath.

The CHAIRMAN. I'm not here to prosecute this case, Judge Beer. Again, I'm asking you about your oath of office. You are a Federal district judge. Do you have an obligation under your oath of office, if called before a grand jury, to tell the truth, or do you not?

Judge BEER. Well, I have an oath of office to protect and defend the Constitution of the United States, and I am to do that every moment of every day. But as far as my telling the truth before a grand jury or any other body, the oath that I took as a United States district judge doesn't compound that duty any more than it—I have just—I—when I take that oath as a citizen, I'm obliged to tell the truth. It is not—

The CHAIRMAN. Why is it, Judge Beer, that you cannot answer a simple, direct question about your oath of office, yes or no?

Senator REID. Mr. Chairman, I think he's answering the question.

The CHAIRMAN. Thank you, Mr. Reid. I will continue my questions.

Judge BEER. Sir, I sure don't mean to—the last thing I want to do is be in any way antagonistic to you, Senator. I'm only saying that, as a lawyer and as a judge, I perceive the oath that I would take if I was appearing before a grand jury to stand on its own bottom. In other words, whether I'm a citizen called before the grand jury or a United States district judge, when I swear to tell the truth in the grand jury, I have an obligation to tell the truth. And I don't perceive that it's magnified in one way or the other by whatever I am. I'm there as a truth-teller in terms of what the grand jury asks of me. I don't perceive that I'm there in any greater or lesser capacity than to respond truthfully to the questions that are put to me at that time. In other words, as you would, sir, I have to tell the truth.

The CHAIRMAN. Any other questions from the panel?

Senator REID. I have a question.

The CHAIRMAN. Mr. Reid.

Senator REID. Judge, you said that you wanted to answer the question in regard to what is going on here. Would you do that?

Judge BEER. Well, I feel this way. It's pretty hard not to be a friend of Walter's and a conferee in the sense of being a sitting United States district judge, and not have some perception of what's taking place. And my perception of it is that there's an opportunity here in this hearing to, if not right a wrong, at least to hear out a fervent plea that there be a lot of consideration brought to the contention about the circumstances here. I perceive that there is more—that there is a great deal more at stake here than just the bare bones of the impeachment proceeding. I see a fine, totally dedicated, long-term, experienced, able U.S. district judge, of which there are—it's a national asset that may be jeopardized as a result of what I perceive to be something less than a foregone conclusion with respect to his situation.

The CHAIRMAN. Mr. Chafee.

Senator CHAFEE. Judge, I'd like to propose a hypothetical to you.

Judge BEER. All right, sir.

Senator CHAFEE. Suppose you approached an individual for an investment and he arranged the investment for you, and in addition gave you a loan for you to make that investment at below the going rate, and subsequently a case came up in which that individual was one of the defendants. The case came before you. Would you feel obligated to explain to the counsel on both sides of your personal involvement?

Judge BEER. I think I would.

Senator CHAFEE. And recuse yourself if—

Judge BEER. I might leave the recusal up to either moving—I might—I think the usual practice that I think most district judges would follow would be to state the situation and leave it up—there's a procedure whereby without either party having—

Senator CHAFEE. Leaving it to them, if they were uncomfortable, they could object to your hearing the case?

Judge BEER. Yes, Senator. Correct.

Senator CHAFEE. Thank you, sir.

The CHAIRMAN. Mr. Danforth.

The VICE CHAIRMAN. Judge, the Federal judges, they're all lawyers. They all have heard evidence, heard cases. They are people who understand the importance of words, meaning of words. Tell me if you can imagine any circumstance where a Federal judge is testifying before a grand jury, and he says point-blank, in answer to the question about whether he ever discussed a case with a State prosecutor, he says, "No," and the accurate answer is, "Yes," can you imagine that not being perjury?

Judge BEER. Yes.

The VICE CHAIRMAN. How?

Judge BEER. I should mention to you, when you say—when you mentioned about Federal district judges, somebody once said to me, "You guys are all fungible," which I guess is what you're saying. We're all, I suppose, of similar backgrounds in the sense of having practiced law and gone on the bench.

The VICE CHAIRMAN. Well, you're of the same background of—

Judge BEER. Right.

The VICE CHAIRMAN. Very—almost identical of Judge Nixon. Can you imagine being asked a point-blank question, "Did you ever discuss a matter with Mr. X?"

Judge BEER. Yes, I—

The VICE CHAIRMAN. And you had discussed the matter with Mr. X, and you say under oath, "No"?

Judge BEER. Senator Danforth, I can, and I'm prepared to try to tell you why I think I can.

The VICE CHAIRMAN. Please do.

Judge BEER. I've been thinking about this a long time, and I'm nervous about it, and I finally understand why witnesses are nervous when they come to my court, as Judge Heflin probably recalls as well. But I've given that a lot of thought, and I am glad you asked me because I want to try to tell you why I think the way I do.

I have been a district judge for only 10 years, but I suppose that in that period of time, as I have gotten ready to sentence in some instances, I have had—as I suppose every district judge has had—either causal letters that have to do with the person coming on to be sentenced. And at one point not all that long ago, while I was a district judge, the situation was reversed where a young man was coming before a State court district judge in New Orleans who had, in a tragic set of circumstances, been responsible for the death of his mother and was the son of an Episcopal priest in New Orleans. And I called Judge Murillo, the State court judge who was fixing to sentence this young man, John Jenkins, and put in what I guess we would all call, who have been in any way in this—in that kind of mainstream, a good word, hesitantly and with a certain amount of forbearance from that judge, which he assured me of as we proceeded through this telephone exchange—I had tried to go call on him. He was not available. And I can see how at some later time, asked if I had attempted in any way to influence the outcome of that, I may have responded that I hadn't.

The VICE CHAIRMAN. You weren't asked that. You're asked, "Have you discussed it?"

Judge BEER. Well——

The VICE CHAIRMAN. If you were asked and you said point-blank, "No, I have not discussed it." Would you have said point-blank, "I have never talked to anyone about the case," would you have said that to a grand jury when you clearly are the subject of the grand jury's investigation? Would you have said, "No, I never talked to anybody. I never talked to any judge about it. I never talked to any prosecutor about it"?

Judge BEER. I can't say what I would say. I see your point, and yet I——

The VICE CHAIRMAN. Well, you can't say no when the answer is yes, can you?

Judge BEER. You're correct. And I understand where you're coming from, and I can't quarrel with it other than to say that in the context of those kinds of circumstances, it's not offensive to me for someone not to recall that at that moment in time, and yet I know that the pure answer to your question is just as you intended—as you framed it and as you know I must answer it that way. It's a nuance, I suppose, a subtlety, and I realize how thin is the ground that I'm standing on. But I still feel like that's what I—I'm glad you asked it because I wanted to respond to it the way you've permitted me to do.

Senator REID. Mr. Chairman, I have another question.

The CHAIRMAN. Senator Reid.

Senator REID. Judge, based on your experience as a State trial judge—or were you an appellate judge State?

Judge BEER. Senator, in Louisiana, as you probably know, you get elected to everything. You run for whatever it is. I ran for and was elected to the State Court of Appeal but in that capacity served often as a State district judge by designation from the Supreme Court.

Senator REID. And then as a Federal district judge——

Judge BEER. Yes, sir.

Senator REID [continuing]. You had a lot of cases tried?

Judge BEER. Ten years' worth.

Senator REID. In one of my former lives, I spent many years representing insurance companies, did a lot of defense work, tried lots of cases. And in the State of Nevada, we always had one instruction. I never failed to have a judge give that instruction. And it was an instruction that said something like this: If you find, you, the jury, if you find that a witness lied, didn't tell the truth about a material fact, then you can disbelieve everything that that witness said.

My job was to convince the jury—and we always found something that a person hadn't told the truth about, but my job, in keeping with that instruction, was to determine if, in fact, it related to a material fact, because the fact that someone didn't tell the truth didn't make any difference unless it related to a material fact. Now, that's a fairly standard instruction given all over the United States, is it not?

Judge BEER. I'd say yes. What we tell—what I would tell the jury is not unlike that. It would be for them to give such weight as they deem appropriate in all of the circumstances, including whether

they perceive it to be a material—in other words, that goes to the weight of their consideration, yes.

Senator REID. And these instructions are passed down through the years; they've been developed. You have an instruction that is given once, and it may be refined a little bit. But basically they are in keeping with human nature, the fact being that people don't always tell the truth about every item. Is that not true? Is that where the instructions come from?

Judge BEER. I think they come—to answer you as best I can, I think they come from exactly what you say, a line of experience. When I write my charge to the jury, I may not follow word for word the form of the so-called model jury charges that we've worked on over the years, at least in my circuit. But basically I say to them that they should make their determination of the case based on their reaction to the witness's testimony as a whole, taking into account all the things that you've discussed, and particularly calling upon them to use their own judgment in making that determination as to veracity. But I think that the measure that you propose that one would bring to it is certainly an acceptable one—the more material, the more emphasis on the need for there to be a truthful response. I don't have any—can't take issue with that.

The CHAIRMAN. Mr. Jeffords.

Senator JEFFORDS. I'd like to go back to the line of Senator Danforth's questioning, what you would do under the circumstances where it may feel you want to put in a good word about a person who is under a charge of some sort?

Now, suppose in that, as in this case, it was a son of someone who you had entered into a very advantageous deal, which was low interest with the deal, it's probably going to pay for itself, et cetera, would that lead you to be more likely or less likely to be willing to enter into a discussion with somebody or to talk to somebody about the case to try and put a good word in?

Judge BEER. I would feel the pressure more in the sense of it would occur—it would perhaps occur to me that there was some kind of string on me. But I'm not sure if—it's so hard, Senator, to try to measure that in terms of the responding and in terms of the extent to which the good word was given. I mean, I see your point, and I know the contended background here, so I see that as completely material to what you all are considering.

I think that basically my reaction would still be the same, which would be: Am I willing to do this in any event, notwithstanding some prior, perhaps long prior relationship that was financially beneficial to me. I don't—my guess is—and that's all it is—knowing Walter as I know him, that that would not have entered his mind.

Senator JEFFORDS. Well, it seems to me it should enter your mind. I grew up in the family of a judge and also worked for a district court judge for a time, and I know my father was always very sensitive to anything which might give any impropriety or any suggestion of it. And I am sure that under those circumstances, my father would never have come close to talking to anyone in any way that might indicate that a financial deal was going to cause him to try and influence it, regardless of the circumstances, and

that he would be laying himself open to a charge of impropriety, or at least a perception of impropriety, even whether there would be none.

So I am just very troubled by that scenario, and it troubles me your response.

Judge BEER. Well, I am concerned that it does because it is not without a lot of thought that I say that my perception of something like that coming on as perhaps it did not—though in the best of us, perhaps it would—trigger some hesitancy or notion that we should proceed with caution.

I am not sure it wouldn't, and I hurry to tell you that I put myself in what I perceive as the general category of district judges in the sense of certainly being wary about ever being used or worked on or exploited in some way. But in fairness to Walter, I cannot immediately agree with the notion that response would not have checked that off as something to make him not respond in some way such as I did with the matter that I mentioned to you.

The CHAIRMAN. Mr. Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman.

Judge, I wonder if you would comment just briefly on your opinion of the propriety of the judge's position once he allowed Wiley Fairchild the advance of \$9,500 and then not beginning payments until the investment yielded royalties back, or in other words, a cash flow, to retire the debt.

What is your personal opinion of the propriety of that?

Judge BEER. Senator, I know virtually nothing about whatever arrangement or—

Senator MURKOWSKI. Just on the surface of recognizing that.

Judge BEER. On the surface, I would have to say that there is an obligation on us in the work that we do to be perhaps more cautious than that, but I'm saying that in retrospect—

The CHAIRMAN. Mr. Murkowski, I'm not going to limit, of course—

Senator MURKOWSKI. That's fine. I'm satisfied, Mr. Chairman.

The CHAIRMAN. Thank you. Judge Nixon is not charged with any impropriety or illegality, and of course this witness cannot testify and would have no way of knowing the facts on that.

Thank you, Judge Beer, for your testimony.

Mr. BRODY. Mr. Chairman, I have just two quick followup questions based on the panel's questions.

The CHAIRMAN. All right.

FURTHER DIRECT EXAMINATION

Mr. BRODY. Judge Beer, in responding to Senator Danforth's question, let me change the hypothetical just slightly. If someone tried to tell you about a case, and you stopped them by saying, "I really don't want to hear about the case," would you say it was more truthful to say that that person had discussed the case with you or had not discussed the case with you?

Judge BEER. Had not.

Mr. BRODY. Now, in response to Senator Reid's questions, you mentioned some of the elements of a perjury charge, I believe, and

materiality was one. Is intent another element of the perjury charge?

Judge BEER. Yes, yes, I think that it is; I am satisfied that it is, and in reviewing the—what do you call it—the executive order of these proceedings, I noticed that it is perceived that way in these proceedings.

Mr. BRODY. If you were asked in a grand jury whether you had discussed a matter, and the question does not trigger in your mind a recollection of the discussion, and you say “No” when you may have had a discussion about that matter, have you committed perjury?

Judge BEER. Well, I can’t be my own judge, but in my opinion, you have not.

Mr. BRODY. Thank you.

The CHAIRMAN. May we dismiss this witness, Mr. Baron?

Mr. BARON. Yes, Mr. Chairman.

The CHAIRMAN. Thank you, Judge, for your testimony.

Judge BEER. Yes, sir.

[Witness excused.]

Mr. BRODY. Respondents call Benjamin Graves.

The CHAIRMAN. Benjamin Graves.

Good morning, Mr. Graves.

Mr. GRAVES. Good morning, sir.

The CHAIRMAN. Do you, Benjamin F. Graves, swear or affirm that the evidence you shall give in the case now pending between the United States and Judge Walter L. Nixon, Jr. shall be the truth, the whole truth and nothing but the truth, so help you, God?

Mr. GRAVES. I do.

The CHAIRMAN. Thank you.

TESTIMONY OF BENJAMIN F. GRAVES

DIRECT EXAMINATION

Mr. BRODY. Good morning, Mr. Graves.

Mr. GRAVES. Good morning.

Mr. BRODY. Why don’t you pull the mike a little bit closer to you? Thank you.

Could you state your full name for the record, please?

Mr. GRAVES. Benjamin F. Graves.

Mr. BRODY. Where do you live, Mr. Graves?

Mr. GRAVES. Gulfport, Mississippi.

Mr. BRODY. And how long have you lived there?

Mr. GRAVES. Since 1968.

Mr. BRODY. Are you currently employed?

Mr. GRAVES. Yes, I am.

Mr. BRODY. And in what occupation?

Mr. GRAVES. I am in the private investigative business.

Mr. BRODY. How long have you been in that business?

Mr. GRAVES. Ten years.

Mr. BRODY. And prior to that time what was your occupation?

Mr. GRAVES. I was a special agent with the FBI for almost 27 years.

Mr. BRODY. And was any part of that employment with the FBI in Mississippi?

Mr. GRAVES. From March 1965 through my retirement in December 1978.

Mr. BRODY. What was your rank, if that term is appropriate, upon retirement?

Mr. GRAVES. I was the senior resident agent in charge of the Gulfport resident agency when I went there in 1968 until I retired.

Mr. BRODY. Do you know Judge Walter Nixon?

Mr. GRAVES. I do.

Mr. BRODY. How did you first come to know Judge Nixon?

Mr. GRAVES. Shortly after I was transferred to the Gulfport resident agency, the FBI conducted the background investigation on Nixon when he was a candidate for the judgeship in the Southern District of Mississippi.

Mr. BRODY. Did you have any further contact following that event?

Mr. GRAVES. I have testified in Judge Nixon's court probably over that 10-year period before I retired on probably half a dozen occasions, and over the 10-year span, I was probably in his courtroom 10 times a year, maybe one hundred times.

Mr. BRODY. Do you have an opinion as to Judge Nixon's character for truthfulness and veracity?

Mr. GRAVES. I think it is outstanding.

Mr. BRODY. And if you can, do you know whether your opinion is shared by others in the law enforcement community in Mississippi?

Mr. GRAVES. I think it is generally the same among the others in the community who know the judge.

Mr. BRODY. Do you have an opinion as to any other qualities about Judge Nixon's character and conduct on the bench?

Mr. GRAVES. Well, I think the judge is an outstanding trial attorney. In fact, I talked to a prominent attorney last Friday who told me he was the best trial attorney that he had ever seen. The judge is very courteous to all of the witnesses; he is always courteous to the prosecutors, to the defense attorneys or to the plaintiff attorney and to the defendant attorney, and he has very good decorum in his courtroom, always courteous to his staff and the marshals in the courtroom.

Mr. BRODY. Mr. Graves, has the jury verdict in Judge Nixon's case affected your opinion of him?

Mr. GRAVES. Not one iota.

Mr. BRODY. And why not?

Mr. GRAVES. Because you build your character over 50 years—I think the judge is about that age—and you don't lose it over a short period of time.

Mr. BRODY. Thank you.

No further questions.

The CHAIRMAN. Your witness, Mr. Baron.

Mr. Edwards will cross-examine.

Mr. EDWARDS. Thank you, Mr. Chairman.

Good morning, Mr. Graves.

Mr. GRAVES. Good morning, sir.

CROSS EXAMINATION

Mr. EDWARDS. I am Don Edwards, one of the managers for the House of Representatives.

Mr. Graves, are you familiar with the three Articles of Impeachment in this matter?

Mr. GRAVES. Vaguely.

Mr. EDWARDS. Well, Mr. Graves, do you have any first-hand knowledge about the facts of this case?

Mr. GRAVES. I have some information regarding the interview which Reid Weingarten and Ken White-Spunner conducted with the judge on April 19, 1984. I am familiar with the newspaper articles. I did not attend the trial and what has come about in the news media.

Mr. EDWARDS. Do you have any first-hand knowledge of the charges in the three Articles of Impeachment, whether or not they are true, false, or any knowledge of them?

Mr. GRAVES. First-hand, but if you can say from reading the newspaper being knowledgeable regarding those, I have serious doubts about some of those perjury counts. I think if you know the judge and he said—

The CHAIRMAN. Continue.

Mr. GRAVES [continuing]. And he said he made a comment, I would take his word over some of the other witnesses'.

Mr. EDWARDS. Can you tell us one way or the other about whether Judge Nixon's statement that he never talked to anybody about the *Drew Fairchild* case was the truth?

Mr. GRAVES. I don't know. I think from—

The CHAIRMAN. I don't think the witness could possibly have any idea of that.

Senator HEFLIN. Mr. Chairman.

The CHAIRMAN. Yes, Judge Heflin.

Senator HEFLIN. I don't mean to object, but I do feel like from a trier of facts, there are problems that arise when you ask questions that are invasive of the province of the jury, and I think we have been doing a great deal of that, not necessarily that anybody has any fault, but at a time that we get into a situation with a witness as to the testing of him that are invasive of the ultimate decision that the panel has to make, I think it has some inherent dangers, and I would just merely mention it.

The CHAIRMAN. I thank you, Senator Heflin, and I share those thoughts and appreciate it.

For both counsel, obviously, these are character witnesses, and we are delighted to and need to hear from them as to the testimony concerning Judge Nixon's character, but they have no way of knowing the facts before us or the ultimate decision that we have to make.

So if you can limit those questions now, it would be helpful.

Mr. EDWARDS. I have no further questions, Mr. Chairman.

The CHAIRMAN. May we release this witness?

Mr. BRODY. We have no further questions, Mr. Chairman.

The CHAIRMAN. Thank you very much, Mr. Graves.

Mr. GRAVES. Thank you, sir.

[Witness excused.]

Mr. BRODY. Our last witness is George Saxon.

The CHAIRMAN. Mr. George Saxon.

Mr. Saxon, good morning.

Mr. SAXON. Good morning.

The CHAIRMAN. Do you, George Saxon, swear or affirm that the evidence you shall give in the case now pending between the United States and Judge Walter L. Nixon, Jr., shall be the truth, the whole truth and nothing but the truth, so help you, God?

Mr. SAXON. I do.

The CHAIRMAN. Good morning, and please have a seat.

TESTIMONY OF GEORGE W. SAXON

DIRECT EXAMINATION

Mr. BRODY. Good morning, Mr. Saxon. Would you state your full name for the record, please?

Mr. SAXON. George W. Saxon.

Mr. BRODY. Where do you live, Mr. Saxon?

Mr. SAXON. Gulfport, Mississippi.

Mr. BRODY. How long have you lived there?

Mr. SAXON. I have lived there since 1956.

Mr. BRODY. And are you currently employed?

Mr. SAXON. No, sir. I recently retired from the Highway Patrol and from the Biloxi City Police Department.

Mr. BRODY. What position with the City of Biloxi did you hold?

Mr. SAXON. Director of Public Safety.

Mr. BRODY. And what position with the Highway Patrolmen did you retire at?

Mr. SAXON. I retired as Chief of the Highway Patrol.

Mr. BRODY. Do you know Judge Walter Nixon?

Mr. SAXON. Yes, I do.

Mr. BRODY. How did you come to know Judge Nixon?

Mr. SAXON. In April of 1956, I was assigned by the Highway Patrol to the Gulf Coast area, and shortly after arriving there, did meet Judge Nixon, who was then an attorney in Biloxi.

Mr. BRODY. Did you have any further contact after that point?

Mr. SAXON. We had casual contact until 1965. In 1964, I was sent to the FBI Academy by the Highway Patrol and promoted to the Investigative Division of the Highway Patrol. In 1965, November of 1965, Judge Nixon's mother was murdered, and I was assigned by the Patrol to assist the Biloxi Police Department in that case.

During the investigation of that case and subsequent trial, I was in daily contact with Judge Nixon, and after that, we became very close friends.

Mr. BRODY. And have you had further contact, then, with Judge Nixon since that time?

Mr. SAXON. Yes, I have.

Mr. BRODY. Do you have an opinion as to Judge Nixon's character for truthfulness and veracity?

Mr. SAXON. In my opinion, Judge Nixon is one of the finest men that I have ever known, and certainly I think he is a very truthful individual.

Mr. BRODY. And if you know whether your opinion is shared by others in the law enforcement community?

Mr. SAXON. He was one of the most highly respected judges in that area by law enforcement people and local attorneys.

Mr. BRODY. Do you have an opinion as to other aspects of Judge Nixon's character.

The CHAIRMAN. I don't think he can state it any more strongly than he just stated it.

Mr. BRODY. I wouldn't mind hearing it again, but——

Mr. SAXON. He is very highly regarded in the community.

Mr. BRODY. I don't have any further questions.

Thank you.

The CHAIRMAN. Mr. Sensenbrenner?

Mr. SENSENBRENNER. Mr. Chairman, the House of Representatives has no cross-examination of this witness.

The CHAIRMAN. Thank you very much.

May we dismiss this witness?

Mr. BRODY. We have no questions.

The CHAIRMAN. Thank you, Mr. Saxon, for your testimony.

[Witness excused.]

Mr. STEWART. Mr. Chairman, our next and last witness is Judge Walter L. Nixon, Jr.

The CHAIRMAN. Excuse me, Judge Nixon. Would you like to take a break before you begin to testify?

Judge NIXON. That would be fine with me, Mr. Chairman. I'm perfectly amenable to whatever the——

The CHAIRMAN. Let's take a 5-minute break. I know you'll be on quite a while. Thank you.

[Recess.]

The CHAIRMAN. Please come forward, Judge Nixon.

Do you, Walter L. Nixon, Jr., swear that the evidence you shall give in the case now pending between the United States and yourself shall be the truth, the whole truth, and nothing but the truth, so help you God?

Judge NIXON. I do.

The CHAIRMAN. Thank you, sir. Please be seated.

TESTIMONY OF JUDGE WALTER L. NIXON, JR.

DIRECT EXAMINATION

Mr. STEWART. Judge Nixon, could you tell the Senators where you were born and raised?

Judge NIXON. I was born in Biloxi, Mississippi, and raised in Biloxi.

Mr. STEWART. How old are you now?

Judge NIXON. I'm 60 years of age.

Mr. STEWART. Where did you attend school?

Judge NIXON. Well, I started at Sacred Heart Academy and finished Notre Dame High School in Biloxi in 1946. I then attended Louisiana State University, LSU, in Baton Rouge, pre-law, and attended and graduated from the Tulane University Law School in New Orleans in 1951.

Mr. STEWART. Now, while you were growing up, what was your father's occupation?

Judge NIXON. My father was a member of the county governing board—it was an elective office called the Board of Supervisors of Harrison County—for 16 years.

Mr. STEWART. And in addition, when he was not in that office, what was his business?

Judge NIXON. He owned some real estate and lived off the rentals.

Mr. STEWART. Now, after your graduation from law school, what did you do then?

Judge NIXON. I took and passed the Louisiana bar and then went back to Biloxi and studied for, and took and passed, the Mississippi bar in 1952, the first time the exam was given since I had graduated from law school in 1951.

Mr. STEWART. Did there come a time when you served in the Armed Forces at that point?

Judge NIXON. Yes. I practiced law a short while in Biloxi, and I was called to active duty in February 1953 and served during the Korean conflict in the Air Force until February 1955.

Mr. STEWART. And what rank were you at your time of discharge?

Judge NIXON. I went in as a second lieutenant, and I came out as a captain. I remained active in the Reserves and retired as a major in the retired Reserve of the Air Force when I went on the bench, at which time I couldn't remain active in the reserves any longer.

Mr. STEWART. After your discharge from the Air Force, what did you do then?

Judge NIXON. I went back into private practice in Biloxi.

Mr. STEWART. Could you describe what the nature of your practice was?

Judge NIXON. It was a general practice which consisted primarily of representing plaintiffs in personal injury work.

Mr. STEWART. And during this period, were you involved in community or bar association activities?

Judge NIXON. Yes. I served as president of the Biloxi Chamber of Commerce, and also I was the second president of what's now the Mississippi Trial Lawyers Association.

Mr. STEWART. Through the years, have you raised a family as well?

Judge NIXON. Yes, I have.

Mr. STEWART. How many children do you have?

Judge NIXON. I have seven altogether.

Mr. STEWART. How old are they now?

Judge NIXON. They range in age from 12 to 39.

Mr. STEWART. When were you appointed Federal judge?

Judge NIXON. I was appointed United States district judge—I was appointed in June 1968, and took the oath of office on July 26, 1968, almost 21—over 21 years ago.

Mr. STEWART. How old were you at the time of your appointment?

Judge NIXON. I was 39.

Mr. STEWART. Was your law practice successful at the time of your appointment?

Judge NIXON. Very.

Mr. STEWART. Why were you willing to give up that practice and go on the bench?

Judge NIXON. I guess for the same reason many people who were making more money do that: to serve in public office. I thought it was the epitome of the legal profession, and I had a very—a person whom I admired very much, Judge Sydney Mize, M-i-z-e, who was U.S. district judge and served, from 1937 until his death in approximately 1965, as U.S. district judge.

Mr. STEWART. Now, I wanted you to tell the Senators, if you could, a little bit about the Southern District of Mississippi. How big is it?

Judge NIXON. The Southern Judicial District of Mississippi consists of 45 of the 82 counties in Mississippi. We have two districts, northern and southern. We have by far the most populous—more populous area: Jackson, Biloxi, Meridian, Vicksburg, and Hattiesburg, Natchez.

Mr. STEWART. Now, did you convene court in all of those cities?

Judge NIXON. I held court in all of them, plus Natchez sometimes in the State court building where we were permitted to hold court by statute.

Mr. STEWART. What was the nature of the case load in the southern district while you were on the bench?

Judge NIXON. We were usually in the top three, and many times first in the Nation, of all the 90-some odd judicial districts in case filings per judge. We always ranked in the top three or so in weighted case load, which meant complex cases, and we were usually in the top five in disposal rate of cases in the Nation.

Mr. STEWART. Now, how many other judges were there on the southern district when you were appointed?

Judge NIXON. Two.

Mr. STEWART. And if you could just give a little overview as to the towns in which you did convene court, how big was your home town, say, back in 1968, Biloxi?

Judge NIXON. I guess Biloxi was about 35 or 40 thousand then.

Mr. STEWART. OK. And Meridian?

Judge NIXON. I would guess. About the same size or a little smaller.

Mr. STEWART. And Hattiesburg?

Judge NIXON. I would say in the same area, same category.

Mr. STEWART. Jackson's a bigger town?

Judge NIXON. Yes. Jackson's the capital, and a large population.

Mr. STEWART. While you've been on the bench, have you by and large known the lawyers who were appearing before you, or did you tend to have lawyers appear before you you'd never seen before?

Judge NIXON. Very seldom did a lawyer appear before me whom I'd never seen before who practiced in our district, unless he was a new lawyer there or a lawyer from out of State.

Mr. STEWART. How would you characterize the relationships between the bench and the bar in the Southern District of Mississippi?

Judge NIXON. Very friendly, very informal. We socialized and participated in recreational activities many times together outside

the courtroom. Once in the courtroom, it was a different story altogether, and everyone understood that and respected it.

Mr. STEWART. Now, have you served in administrative or supervisory positions within the judiciary?

Judge NIXON. Yes. I've been chief judge of the southern district since around September or October 1982.

Mr. STEWART. And did you serve on the Judicial Council?

Judge NIXON. I was elected president—yes, I did. I was serving on the Fifth Circuit Judicial Council at the time that all of this occurred, and I had served as president of the Fifth Circuit United States District Judges Association, which consisted of all of the United States District Judges in Florida, Georgia, Alabama, Mississippi, Texas, Louisiana, and the Canal Zone, for one year.

Mr. STEWART. Have you ever considered accepting any other judicial appointment?

Judge NIXON. Yes, I did.

Mr. STEWART. And what were the circumstances of that?

Judge NIXON. Well, I was appointed in 1968 by President Lyndon Johnson, and in 1982, President Ronald Reagan offered me the Fifth Circuit judgeship, a promotion, if you want to call it that, to the Fifth Circuit.

Mr. STEWART. And why did you not accept that suggestion?

Judge NIXON. Because I was a trial lawyer. I enjoyed the courtroom. I enjoyed the people. I enjoyed being where, quote, as the children say, "where the action's at." And I enjoyed being a trial judge. I did not want to go into the inner sanctum of the Court of Appeals and just read briefs and listen to arguments and hear opinions.

Mr. STEWART. After you were appointed to the bench in 1968, did you have occasion to devote much time to your personal finances?

Judge NIXON. No, I didn't. In fact, I've always neglected them.

Mr. STEWART. How many hours a week on the average would you spend on your judicial duties?

Judge NIXON. I'd say at least 50 or 60, Mr. Stewart. It varied, but many times we held court at night and sometimes Saturdays. It was not unusual because of our heavy caseload. And our cases consisted of so many complex cases, so many long, drawn-out, hard fought civil rights cases that we were in the middle of as United States district judges during those times.

Mr. STEWART. I wanted to direct your attention to 1979. About that time, how many of your children were still living at home?

Judge NIXON. All of them except the two oldest from my first marriage.

Mr. STEWART. OK. And what were their ages?

Judge NIXON. Ages of which?

Mr. STEWART. The ones at home.

Judge NIXON. The ones at home, in 1979 they were aged 2 to 15 years of age.

Mr. STEWART. OK. Now, at that point, did you anticipate any special educational expenses?

Judge NIXON. Yes. We had and have one child who is L.D., and with the problems that go with learning disability, also dyslexia and emotional problems at that time. And we tried to place this child in various L.D. schools throughout the country and traveled

to many areas—Kentucky, New Mexico, et cetera. And it was a financial strain and problem.

Mr. STEWART. Now, did you take any steps to try to meet anticipated increases—well, let me stop for a second. Also, did you anticipate the ordinary college expenses as well?

Judge NIXON. Yes, I did.

Mr. STEWART. Now, did you take any steps to try to meet those anticipated increases in your expenses?

Judge NIXON. Yes, I did.

Mr. STEWART. What did you do?

Judge NIXON. I talked to various friends of mine and asked them if they—told them that if they knew of any investments that looked good, primarily any that they were going to go into and if there was room for anyone else, I would like the opportunity to explore them and possibly invest, or if they knew of anything that I could do to possibly increase my income, that I would like to do that with these special needs and other needs that were coming on, college education of my children.

Mr. STEWART. Was Carroll Ingram one of the people you spoke to?

Judge NIXON. Yes.

Mr. STEWART. Do you recall some of the others you talked to at that time?

Judge NIXON. Yes. Bill Pittman who was president of the branch of one of the banks at home, I think another attorney named Gene Wilkinson, Robert Stockard who was a friend of mine in Jackson, Mississippi, and various others. I think I talked to either James or D.A. Biglane and perhaps some more friends of mine.

Mr. STEWART. Why did you speak to those particular people?

Judge NIXON. Because I knew they were successful business people, and I had a great deal of confidence in their business acumen.

Mr. STEWART. Were they friends as well?

Judge NIXON. Oh, very definitely.

Mr. STEWART. Now, following these inquiries, did you actually make any investments?

Judge NIXON. Yes, I did.

Mr. STEWART. Do you recall about how many?

Judge NIXON. Well, I know I made four oil and gas investments in 1981, and I think that was about it.

Mr. STEWART. And where did you come up with the money for those investments?

Judge NIXON. I borrowed the money.

Mr. STEWART. And where did you borrow it?

Judge NIXON. Well, in the case of three of them, I borrowed it from the bank, and I was going to borrow it for the fourth, but because of some circumstances that I think you're going to ask me about, I did not have to borrow that particular money from the bank, which I had intended and planned to do and also had told Carroll Ingram that I wanted to do and have some notice of if this other transaction—

Mr. STEWART. Well, wait a second. Let's get to that now. The fourth investment you're talking about is with Mr. Fairchild.

Judge NIXON. Yes.

Mr. STEWART. OK. And how had you intended to finance that investment?

Judge NIXON. Same way as the others—a loan from the bank.

Mr. STEWART. And why did you not do so?

Judge NIXON. Because when Carroll called me in early 1981 and told me he was bringing the instruments down and the notes, and I asked him why he hadn't given me more notice, as I'd asked him to do so that I could arrange for my financing, he told me that Mr. Fairchild said he was going to carry the paper and finance it at a rate of—a reasonable rate of interest that he would set, or had set.

Mr. STEWART. And is that how you went forward?

Judge NIXON. Yes.

Mr. STEWART. Now, did you repay that loan?

Judge NIXON. Yes.

Mr. STEWART. And did you pay it late or early?

Judge NIXON. Well, the three notes were payable on February 25, 1983. I paid one of them a little early, and I think I paid the other two about four or five days late.

Mr. STEWART. OK. And when Mr. Ingram brought those notes by for you, did he explain anything about the dates on the instruments, the deeds?

Judge NIXON. Yes, he did. I noticed they were dated back in 1980, and I asked Carroll about it. And he said that it was not unusual but customary to do so, to date the instruments on or about the time that the transaction had been agreed upon, to conform with it at that date for various reasons.

Mr. STEWART. Did that—

Judge NIXON. I think one of which he said was to establish the value of the interests at the time the agreement was actually made.

Mr. STEWART. Did that explanation satisfy you?

Judge NIXON. Yes, it did.

Mr. STEWART. OK. Now, in summary fashion, how did these four oil investments turn out? I'm including the Fairchild investment and the other three you made.

Judge NIXON. Well, I think that the only one I made any profit on was the Fairchild investment. I don't even think I got my money back on the other three, my investment.

Mr. STEWART. Have you paid off all of the loans associated with those four investments?

Judge NIXON. Yes.

Mr. STEWART. Now, were those investments reported on your financial disclosure forms?

Judge NIXON. Yes.

Mr. STEWART. And were the deeds of conveyance recorded in the public land records for those investments?

Judge NIXON. I assume all of them were. I know the ones in the Fairchild case were because this has come to my attention more vividly.

Mr. STEWART. Just quickly directing your attention to Mr. Fairchild, after this transaction was completed, did he ever mention to you possibly joining in other business ventures?

Judge NIXON. In October 1982, when a reception was given for me by the South Central Bar Association in Hattiesburg, he men-

tioned in passing there that—he attended that reception, among many other people, lawyers and non-lawyers, when I became new chief judge of the district. And he mentioned in passing that there might be another investment that I might be interested in and he might talk to me about, but nothing more came of that and——

Mr. STEWART. What was your response?

Senator CHAFEE. Excuse me. The “he” you are referring to, was this Mr. Fairchild?

Judge NIXON. Yes, sir. Yes, Senator.

Senator CHAFEE. Thank you.

Mr. STEWART. Anything else come of that?

Judge NIXON. Nothing more.

Mr. STEWART. OK. And your response to Mr. Fairchild at the time?

Judge NIXON. I’d be happy to talk to him if he ever wanted to talk about it, or something to that effect.

Mr. STEWART. OK. After that first investment, had you ever asked Mr. Ingram or Mr. Fairchild about a subsequent investment?

Judge NIXON. No.

Mr. STEWART. Now, during this period from 1981 on, did you keep in some contact with Mr. Fairchild?

Judge NIXON. Yes. He had requested me to do so. He told me that other people who had invested with him or whom he had sold oil and gas royalties to kept in touch with him from time to time. I gathered he was kind of a lonely man, sort of a recluse, and he enjoyed people checking in, calling him once in a while and stopping by to see him. And he asked me if I would keep in touch with him, and I told him I would.

Mr. STEWART. Now, you’ve heard the testimony from Mr. Fairchild that you said to him something to the effect of, “I’ll be glad to help you if I can. If I can’t, I’ll just tell you.” Do you recall saying that?

Judge NIXON. I think in May 1981, one time I stopped by to see him, and when I was leaving, I mentioned something to that effect, yes.

Mr. STEWART. What did you mean when you said that?

Judge NIXON. Well, it was just something that was normally said by me when I talked to someone. Of course, if—I guess what I really meant by it, when you stop and think about it, is that certainly I wouldn’t—I would help someone if I could, and if I couldn’t, I wouldn’t——

Mr. STEWART. Did you mean——

Judge NIXON. If they asked anything.

Mr. STEWART. Go ahead. I’m sorry.

Judge NIXON. If it was something illegal or something I couldn’t do as a judge, otherwise, I’d certainly want them to know that I couldn’t and wouldn’t do it. That’s why I said it the way I did.

Mr. STEWART. And this was not an unusual thing, in your experience?

Judge NIXON. No, Mr. Stewart, it wasn’t.

Mr. STEWART. I want to move on now and get into these conversations that are the subject of the Articles of Impeachment and have somehow become the most important conversations of your life.

Did there come a time when you learned that Wiley Fairchild's son Drew was being prosecuted in a drug case?

Judge NIXON. Yes.

Mr. STEWART. And how did you learn that?

Judge NIXON. Well, in the first part of 1983, I read something in the paper, Hattiesburg paper about that. And also I think—but I'm not sure—there was something on television up there in Hattiesburg, and I know I probably had the conversation with some other people concerning the matter when it did come out in the paper. It was an article criticizing Bud Holmes for the handling of that case.

Mr. STEWART. What was your next contact with Mr. Fairchild after you saw these items in the press?

Judge NIXON. In March 1983, I was trying a bank robbery case in Hattiesburg, on March the 10th and 11th, which involved a defendant, and I remember the name—Douglas "Chico" Patterson. It was a jury trial. And when the jury was out deliberating on the second day of the trial, I called Mr. Fairchild, which I had done on several occasions before, during a break while the jury was out and—

Mr. STEWART. Well, let me stop you there. Did anything prompt you to call him at that point in March 1983?

Judge NIXON. No, except I had recently paid off the investment, or the notes, that is, as required by the terms of the notes. And I thought it would be a good opportunity to go by and talk to him.

Mr. STEWART. Now, do you recall any situation with your wife Barbara's illness at that time?

Judge NIXON. Barbara had had periodontal surgery not long before that time, and she was having a pretty tough time recuperating.

Mr. STEWART. Were you able to go see Mr. Fairchild that day?

Judge NIXON. Yes, I was.

Mr. STEWART. And what happened when you got to Mr. Fairchild's office—about what time did you get there, do you recall?

Judge NIXON. It was not—it was early afternoon.

Mr. STEWART. What happened when you got there?

Judge NIXON. Well, I went to his office, and I knocked on the door that I'd always entered, the door to where you parked over by his automobile and walked right into his office on the side. He admitted me, and his brother Rodney was in there.

Mr. STEWART. And what was the conversation?

The CHAIRMAN. Excuse me. Anybody else there, Judge?

Judge NIXON. Just his brother Rodney, Senator. Rodney Fairchild.

The CHAIRMAN. No one else?

Judge NIXON. No one else.

The CHAIRMAN. No one else.

Judge NIXON. That's correct, sir.

The CHAIRMAN. You, Wiley, and Rodney?

Judge NIXON. Yes, sir.

The CHAIRMAN. Thank you.

Judge NIXON. And we exchanged pleasantries and said a few words, and then he turned to Rodney and, in a gruff voice, told him to get out. I thought he was mad at Rodney about something because of the manner and tone of the voice he used, and Rodney left.

Mr. STEWART. All right. And then what was the conversation?

Judge NIXON. He said words to the effect that, "Judge, you're a good man. You've got a good reputation." He said, "I'm mad as hell." He said, "I've got a son who was involved in a drug matter at the Hattiesburg airport." And I said, "Yes, I read that in the paper." And he said, "I don't want to do a damn thing for him." He said, "He's been nothing but trouble all his life, given me trouble all his life, and I'm not asking you to do anything." He said, "But I'm tired of my name being drug through the news media," and he said, "My good name is just being ruined." And he said, "I think Bud Holmes is blackmailing me, and Carroll Ingram could be in on it." And he also mentioned that another person, whose name I didn't recall until—now I know it—had not been prosecuted, and he was just as guilty as his son.

Mr. STEWART. What was your response to Mr. Fairchild's remarks?

Judge NIXON. I was taken aback, of course, to say the least.

Mr. STEWART. Do you recall what you said to him, if anything?

Judge NIXON. No, I don't. I don't think I—I don't know that I said anything to him. I was almost speechless, because here was a man that I had done business with. He was an elderly man, good businessman, apparently a good reputation, and I thought he was sincere in what he was saying—that is, his feeling—but I didn't think that Bud Holmes—and I knew that Carroll Ingram would not be involved in any blackmail of anyone.

Mr. STEWART. You had known Bud Holmes—

Judge NIXON. I thought it was just some figment of Mr. Fairchild's imagination, although a real figment at the time.

Mr. STEWART. You knew Bud Holmes?

Judge NIXON. Yes.

Mr. STEWART. You'd known him for a long time?

Judge NIXON. Yes.

Mr. STEWART. OK. And you also had known Carroll Ingram for a long time?

Judge NIXON. Yes.

Mr. STEWART. Did you understand exactly what Mr. Fairchild was telling you in connection with this blackmail allegation?

Judge NIXON. No. First of all, you've got to know Mr. Fairchild. I think some who have seen him will maybe realize that sometimes he talks in riddles and you don't know what he's saying exactly. And he was—but from what I could gather, he mentioned blackmail in connection with his son—with the case being drug through the news media and his good name being tarnished.

Mr. STEWART. All right. Was there any further conversation with Mr. Fairchild there that you recall now?

Judge NIXON. No, I think we just—not that I recall. I said good-bye and left.

Mr. STEWART. Now, after you left, where did you go?

Judge NIXON. I went back to my chambers in Hattiesburg.

Mr. STEWART. Did you have occasion to see Bud Holmes later that day?

Judge NIXON. Yes. I had called Bud before I called Mr. Fairchild because I wanted to arrange to go out to his farm to borrow some

Hank Williams records, Hank Williams, Sr., records that he had, and I wanted to tape them because I like Hank Williams' music.

Mr. STEWART. If I could—

Judge NIXON. I had talked to him several times before on several occasions about borrowing them, and I think he was getting them together—I knew he was getting them together for me.

Mr. STEWART. Judge Nixon, I had intended to have the records right here. They are in the possession of the committee so you could identify them, but you do recall that you did borrow records then?

Judge NIXON. Yes.

Mr. STEWART. OK.

Judge NIXON. Several.

Mr. STEWART. If you could look at exhibit 17, it's marked in the green book.

Judge NIXON. All right.

Mr. STEWART. You'll see there's a xerox there of some phone messages. We did not have these materials at the trial. But I direct your attention to the one at the bottom there, apparently signed by "B.L." and addressed to "Judge." Do you know that handwriting?

Judge NIXON. Yes. My secretary, Betty Lou Watkins, who was then Betty Lou Clark.

Mr. STEWART. So "B.L." would stand for Betty Lou?

Judge NIXON. Right.

Mr. STEWART. OK. And can you make out—it's not a great copy, but can you make out what the message is?

Judge NIXON. Yes. It's a call at 12:10 p.m. on 3/11/83 to me from Bud Holmes, left his phone number, and said will—I think "will be in his office" or "will wait in his office for your call," I think is what it says.

Mr. STEWART. Do you have any independent recollection of receiving this message?

Judge NIXON. No.

Mr. STEWART. But is it consistent with your recollection that you did hook up with Mr. Holmes that day?

Judge NIXON. Yes.

Mr. STEWART. You can close that up. I'll keep moving.

How did you get out to Mr. Holmes' farm that afternoon or evening?

Judge NIXON. I drove out there.

Mr. STEWART. About what time?

Judge NIXON. It was somewhere in the neighborhood of 5:00 o'clock; probably a little after.

Mr. STEWART. Did you drive yourself?

Judge NIXON. Yes.

Mr. STEWART. OK. Was anyone in the car with you?

Judge NIXON. No.

Mr. STEWART. Did you meet Mr. Holmes there?

Judge NIXON. Yes. He was there, or came shortly thereafter. I don't know who arrived first.

Mr. STEWART. OK. And what did you do when you and Mr. Holmes were there together?

Judge NIXON. We went in and had a drink in his big room that he had, and we were looking at Hank Williams records, selecting

them, particularly I, and listening to them. And promptly he got on the telephone. He had I think two phones there, two different lines, and he was making calls and receiving them because he had a definite like for telephones.

Mr. STEWART. Now, did Mr. Holmes appear to have had a drink or two before he got there?

Judge NIXON. He appeared to be pretty well inebriated, yes, sir.

Mr. STEWART. Now, while he was on the telephone, what were you doing?

Judge NIXON. I was listening to the records and looking at them and trying to pick some out.

Mr. STEWART. You mentioned it was a big room. About how big a room is it?

Judge NIXON. I'd say it's probably 30 by 40 or perhaps even larger. It could be 40 by 50.

Mr. STEWART. About how far from the phone were you while you were looking at the records?

Judge NIXON. I would say 15, 20 feet or so.

Mr. STEWART. Now, while you're in the room there with Mr. Holmes, he's on and off the phone, did the subject of Mr. Fairchild's remarks to you earlier that day come up?

Judge NIXON. Yes.

Mr. STEWART. And how did it come up?

Judge NIXON. Mr. Fairchild's statement, which I discounted, still weighed on my mind, and I mentioned, in having a drink with Bud Holmes, I said, "Bud, a matter that you're handling concerning Mr. Fairchild's son was brought up"—"he mentioned it to me and complained that you were blackmailing him."

Mr. STEWART. And what was Mr. Holmes' reaction?

Judge NIXON. Well, he said, if I may quote him, he said, "The son of a bitch is paranoid. He's crazy." He said, "He's got so much money he'll never be able to spend it, and he thinks everybody's after his money all the time." And he said, "Let me tell you about that case."

Mr. STEWART. And what was your response?

Judge NIXON. I said, "Bud, I don't want to hear about it."

Mr. STEWART. Why did you say that?

Judge NIXON. Because it would take Bud about five hours to tell you something that anyone else could tell you in about an hour or so.

Mr. STEWART. Did he mention to you——

Judge NIXON. And it was getting late, and I wanted to pick out the records. And that was going to take a while, and I had to drive home that night, about a two-hour drive back down to Ocean Springs, Mississippi, which is right next to Biloxi. And, of course, Barbara had had periodontal surgery, and I wanted to get home, if I could, to see about her as soon as I could.

Mr. STEWART. Did you talk about it further with Mr. Holmes at that point?

Judge NIXON. No. Not at that point.

Mr. STEWART. Now, did there come a time that evening when you did speak on the telephone with Wiley Fairchild?

Judge NIXON. Yes.

Mr. STEWART. And how did that arise?

Judge NIXON. I was playing the records and looking at them, and Bud Holmes was over using the telephone, as usual, talking and receiving calls. And he called me and said, "Judge, come here a minute." I turned around and walked that way. He handed me the telephone. He said, "Here, talk to Wiley Fairchild," he said, "and I want to talk to him again after you finish."

Mr. STEWART. And what did Mr. Fairchild say when you got on the phone?

Judge NIXON. He said, "Judge, I'm glad you mentioned that matter to that fellow. I'm satisfied."

Mr. STEWART. Do you recall what you might have—what you said to Mr. Fairchild?

Judge NIXON. I don't remember my exact words, but I'm sure I said, "Well, that's good. I'm glad it's resolved."

Mr. STEWART. Do you recall anything more about that exchange with Mr. Fairchild on the telephone?

Judge NIXON. No, except I handed the phone back to Bud Holmes.

Mr. STEWART. Now, had you been listening to Mr. Holmes' conversation with Wiley Fairchild before he handed you the phone?

Judge NIXON. No, I didn't even know he was talking to Wiley Fairchild. In fact, I couldn't hear his conversations anyway. I was playing the records quite loud.

Mr. STEWART. When you handed him back—

Judge NIXON. I had my back to him.

Mr. STEWART. When you handed him back the phone, did you hang around and listen in?

Judge NIXON. No.

Mr. STEWART. What did you do?

Judge NIXON. I went back over to where I'd been playing the record, selecting them.

Mr. STEWART. Now, after Mr. Holmes hung up with Wiley Fairchild, did you have an exchange with Mr. Holmes about that phone call?

Judge NIXON. Yes. I said, "Bud, why did you do that?" What I meant by that was: Why did you just call me over there and put me on the phone without telling me what you were going to do? And he said, "Well, I wanted to get the damn thing straightened out. It's all worked out anyway." The case was. He said, "It was all hit, the deal was worked on the case," he said, "anyway."

Mr. STEWART. Did you talk about it any further—

Judge NIXON. No.

Mr. STEWART [continuing]. With Mr. Holmes that night?

Judge NIXON. No.

Mr. STEWART. Did you talk about other things with Mr. Holmes after that phone call?

Judge NIXON. I'm sure we probably did because we had talked during the night off and on, of course, about professional football and what have you.

Mr. STEWART. What did you think the phone call had been about?

Judge NIXON. Well, the only thing I could surmise it was about was the thing that Mr. Fairchild had mentioned to me, the accusation of blackmail, which I had just passed along hoping—thinking

it was, you know—looking back now in hindsight, it was a misunderstanding and that could be straightened out. And that's the only thing that I related to Bud Holmes. So I assume that's all it could have been about.

Mr. STEWART. Now, do you recall about how much later then you left Mr. Holmes' farm?

Judge NIXON. No. Not exactly.

Mr. STEWART. Now, after that day, did you brood about these conversations you'd had with Mr. Fairchild and Mr. Holmes?

Judge NIXON. Absolutely not. I really forgot about them. What I mean is they just weren't that important. It was what I considered to be, now in hindsight, and at that time, I'm sure a misunderstanding, a lot of nonsense, and it was apparently straightened out because I heard nothing more from it or about it after that. And that was the end of it as far as I was concerned.

Mr. STEWART. Did you think anything wrong had happened during those conversations?

Judge NIXON. Absolutely not.

Mr. STEWART. Now, since that day, have you ever talked about that phone call with Wiley Fairchild?

Judge NIXON. No.

Mr. STEWART. Since that day, and let me cut this off, before you went to the grand jury in July 1984, did you ever talk about that phone call or your conversation with Mr. Holmes, did you ever talk about those with Mr. Holmes?

Judge NIXON. Before I went to——

Mr. STEWART. Before you went to the grand jury.

Judge NIXON. No. No.

Mr. STEWART. Now, did you ever mention that phone call in any way afterwards to Mr. Ingram, Carroll Ingram?

Judge NIXON. Well, I told Carroll, in a telephone conversation which we were having, in which I remember telling him about Mr. Fairchild had mentioned another investment, but nothing more had come of it; that Mr. Fairchild had mentioned a matter to me which I had passed along to Bud Holmes and it was apparently straightened out, just in those words and no more detail, and Carroll didn't ask me anything about it.

Mr. STEWART. Why didn't you provide any more detail to Mr. Ingram on it when you mentioned it?

Judge NIXON. Well, it——

Senator CHAFEE. Excuse me. Could you go back? What was the question just before that one?

Mr. STEWART. I had been asking the substance of the conversation with Carroll Ingram. Perhaps I can place it in time, if that would help.

Senator CHAFEE. I can get the record. OK. All right, go ahead.

Mr. STEWART. Do you recall when this conversation was with Mr. Ingram after the phone call with Mr. Fairchild?

Judge NIXON. It was not too long after, just a week, a couple of weeks maybe, or so. I don't remember exactly, but not long.

Mr. STEWART. I wanted to ask why you were not more specific when you spoke to Mr. Ingram about, in referring to the events of that day?

Judge NIXON. Well, to begin with, I thought it was a lot of nonsense. I thought it was a misunderstanding which had been straightened out, apparently it had been, and, of course, Carroll Ingram was one of the ones that Wiley Fairchild had mentioned as possibly blackmailing him, and you saw Carroll Ingram's reaction here to even the insinuation that he could have been guilty of blackmail, and I didn't think there was any need in saying anything about that because there was nothing to it apparently, and that was the end of it.

Mr. STEWART. Now, I just want to cover one point here which is, when you testified at your trial, you were asked some questions about the date May 14, 1982, which was the date Mr. Holmes has said he thinks the phone call was—

Judge NIXON. Yes.

Mr. STEWART [continuing]. Different from your date, in your recollection, it was in March 1983, and you gave your testimony that you were not in Hattiesburg on May 14, 1982. Have you discovered, since then, that you were in error when you said that?

Judge NIXON. Yes.

Mr. STEWART. And how did that error occur?

Judge NIXON. Well, shortly before the trial, or at the trial, my trial, we found out that, I think by reading Mr. Holmes—I don't know what it was that brought it to our attention that he contended that May 14, 1982, was the date that that phone call was.

Mr. STEWART. OK. Did you make efforts to determine where you were on May 14?

Judge NIXON. Yes, we did.

Mr. STEWART. And were you able to determine where you were?

Judge NIXON. Extensive efforts.

No, I wasn't. I knew my docket showed I was in Biloxi that morning getting ready to try the big asbestos case, which was a pilot case.

Mr. STEWART. Did you discover later on that there were some records not in your possession that indicated you had been in Hattiesburg that afternoon?

Judge NIXON. Yes. The Department of Justice had my dentist's record, Dr. York in Hattiesburg, in their possession. They had not delivered them to us as they had been required to by the district judge, and we didn't have access to them, and they showed that I went up there for a dental treatment that day.

Mr. STEWART. With that error corrected now, do you believe that May 14, 1982, was the day when you had borrowed the Hank Williams records and had these conversations?

Judge NIXON. No, it was not.

Mr. STEWART. I want to ask now about the Federal investigation itself. Do you recall being interviewed by Reid, Weingarten and Agent Ken White-Spunner on April 19, 1984?

Judge NIXON. Yes, I do.

Mr. STEWART. OK. Did you know the subject of the interview before they came into your office?

Judge NIXON. No.

Mr. STEWART. And when they arrived, did you object to being tape recorded during the interview?

Judge NIXON. Absolutely not.

Mr. STEWART. Why not?

Judge NIXON. Because I had nothing at all to hide. I—after Mr. Weingarten told me, before the taping, and after he had arrived there—

Mr. Stewart. Well, let me clear that up for a second. I wanted to ask about it.

Judge NIXON. All right.

Mr. STEWART. There was an exchange with Mr. Weingarten before the tape recorder was turned on, wasn't there?

Judge NIXON. Yes.

Mr. STEWART. OK. Please continue. What was the nature of that?

Judge NIXON. He told me that he was down investigating and wanted to talk to me about an oil and gas transaction that I had with Wiley Fairchild, which they thought might be an imbalanced transaction, in the handling of the Wiley Fairchild's son's drug smuggling case on the Federal level and whether there was any connection between the two.

Mr. STEWART. Now, did you learn anything during that interview about a Federal aspect of the *Drew Fairchild* case?

Judge NIXON. Yes, for the first time, from Mr. Weingarten.

Mr. STEWART. So you had not known that there was any Federal feature to it before then?

Judge NIXON. No.

Mr. STEWART. And as a Federal official, were you particularly interested in that information?

Judge NIXON. Certainly.

Mr. STEWART. And why was that?

Judge NIXON. Well, I was interested in it because, apparently, they were checking to determine, or investigating to determine whether I had in any way influenced the handling of that case in Federal court, or the steering of that case from Federal to State court, which he mentioned to me during the interview and before.

Mr. STEWART. Now, Judge, the transcript of that interview is available to the committee, so I'm not going to run through every exchange there. Did you attempt to answer truthfully during that interview?

Judge NIXON. Yes, I did.

Mr. STEWART. And during the interview, did you have occasion to think of this blackmail conversation with Wiley Fairchild, the phone call from Bud Holmes' phone?

Judge NIXON. I honestly did not.

Mr. STEWART. Do you know why it did not come to your mind?

Judge NIXON. No, I don't, Mr. Stewart, but I can surmise why now, looking back in hindsight.

Mr. STEWART. OK. Well, I'm not asking you to surmise.

Judge NIXON. No.

Mr. STEWART. If you had been asked about whether Wiley Fairchild had complained about being blackmailed, would you have been willing to disclose those matters?

Judge NIXON. Certainly. I had nothing at all to hide.

Mr. STEWART. OK. Were there any criminal charges brought against you based on that interview?

Judge NIXON. No.

Mr. STEWART. Now, you've had a chance to review that transcript, probably more than you like, having done that, do you think your answers were truthful at the time you gave them?

Judge NIXON. I certainly do.

Mr. STEWART. Now, immediately after that interview, did you contact anyone to ask them, or try to find out what was going on, what the interview was all about?

Judge NIXON. Yes.

Mr. STEWART. Can you tell the Senators who you tried to contact?

Judge NIXON. Yes, I called George Phillips, the United States Attorney, Bud Holmes, and Carroll Ingram.

Mr. STEWART. And were any of those three people able to tell you what the investigation was about?

Judge NIXON. They all professed no knowledge, whatsoever, of the investigation or what it was about in any way. As a matter of fact, Bud Holmes made some remarks about Mr. Weingarten.

Mr. STEWART. Well, we can pass them by. Before you made those calls, had you notified the prosecutor, Mr. Weingarten, that you were going to do so?

Judge NIXON. Yes. Before he left my office, I told him that I was going to call those three people, and he acknowledged this in my trial that I did tell him I was going to do that.

Mr. STEWART. OK. And why did you tell him that before you made those calls?

Judge NIXON. Well, because I didn't want him to think that, then, I was going to try to call those people to—surreptitiously to suggest anything to them or to try to influence them in any way. I wanted him to know exactly what I was going to do so that no one could come back and insinuate or say that I tried to do anything like that.

Mr. STEWART. Now, did you ever ask Mr. Holmes to find out if Wiley Fairchild taped his phone calls?

Judge NIXON. Absolutely not.

Mr. STEWART. Did you ever ask anybody to find that out?

Judge NIXON. No.

Mr. STEWART. I want to move ahead now to the grand jury appearance in July 1984. Were you subpoenaed for that appearance or did you volunteer to appear?

Judge NIXON. No. There had been such a flood of publicity in the newspapers. I had been indicted, convicted, sentenced, and everything else, by the news media. Every time you picked up a newspaper or looked at a TV news program, there were these overriding royalty interest conveyances on news media, on television, my picture, "Federal judge accused of corruption." There was even an editorial in the Meridian paper, I think it was really before I went to the grand jury, or shortly thereafter, stating that I was going to be indicted and going to be convicted and should resign my office, and I went there. I asked my attorney if he could ask Reid Weingarten if I could appear before that grand jury to tell them what this was all about and clear this matter up and show that I was innocent and get this over with.

Mr. STEWART. What impact did that publicity have on you?

Judge NIXON. Well, of course, you can imagine it was devastating to my family and to me. My children would come home from school crying sometimes and say, Daddy, so and so said you're a crook; so and so said you're corrupt; so and so said you took money for this, or did that, and that—the pain it was inflicting on my family and on me and my reputation and on the Federal judiciary, which I love dearly, also, caused me to ask for permission to go before the grand jury and tell them what this was all about and answer their questions.

Mr. STEWART. I think you may have provided some of this, judge, but I want to make sure. Can you try to describe, for the Senators, your state of mind when you appeared before the grand jury in July 1984?

Judge NIXON. I was outraged. I was upset. I wanted to straighten things out. I wanted to get this over with, and I wanted to go back to my normal life, mine and my family's life at that time. I wanted to set the record straight and answer anything that needed to be answered, and I was determined to try to get that done.

Mr. STEWART. Now, did you attempt to answer truthfully the questions you were asked before the grand jury?

Judge NIXON. Yes, I did.

Mr. STEWART. Now, while you were before the grand jury, did you testify about the blackmail conversations?

Judge NIXON. No.

Mr. STEWART. Why not?

Judge NIXON. Mr. Stewart, it didn't, simply did not come to my mind; it was a nothing, and I'm sure it was in my recollect. I can't say it was forgotten, but I did not think about it. It was so—it was something that was, I guess the reason I didn't think about it, I don't know to this day, but I just simply did not think about it.

Mr. STEWART. OK.

Judge NIXON. I can tell you probably why, but I don't know why. I wish I would have been able to think about it. I wish I had. I wish a question had been asked of me about the blackmail allegation that would have triggered it, but it was not at any time.

Mr. STEWART. Having reviewed your transcript of that grand jury, do you think your testimony there was truthful at the time?

Judge NIXON. Yes, it was.

Mr. STEWART. Just a couple other—

Judge NIXON. I certainly at no time intended for it to be other than truthful.

Mr. STEWART. I just have a couple more matters I wanted to cover. In February 1985, this is about seven months after you appeared before the grand jury, do you recall being visited at the Hattiesburg courthouse by Bud Holmes, you met him downstairs in the street?

Judge NIXON. Yes. Yes.

Mr. STEWART. OK. And how did that meeting come to occur?

Judge NIXON. I was trying a products liability case, a jury case, and it was well into the night, the jury was out deliberating, and I received a phone call from Bud Holmes in my chambers, and he sounded upset and said, judge, I need to see you. I said, well, come on up. I'll be here a while. The jury is out deliberating. He said, I don't want to come up there. I said, well, why not? He said, well, I

just don't want to, the way things are around this area at this time. You'd have to be there to know how things were around that area with the——

Mr. STEWART. Did the grand jury sit in that courthouse?

Judge NIXON. Yes. And I said, well, why not, Bud? He said, well, who are the lawyers involved in the case you're trying? And I told him, and I mentioned one of them by name, and he said, now, I know I'm not coming up there.

Mr. STEWART. Was that a lawyer he had dealings with in his divorce?

Judge NIXON. Yes. This lawyer represented his first, Bud's first wife in the divorce case, and, to say the least, Bud wasn't very fond of him for that reason and other reasons that he had expressed on many occasions.

Mr. STEWART. Did you meet with Mr. Holmes that evening?

Judge NIXON. Yes. I told him, well, I said, well, I'll meet you downstairs, Bud. He said, well, I'll pull up right next to your car in your reserved parking place, and I'd like to talk to you there, or I suggested, I don't remember which one.

Mr. STEWART. OK.

Judge NIXON. And that's what happened.

Mr. STEWART. And you did meet with him?

Judge NIXON. Yes.

Mr. STEWART. And what was the conversation?

Judge NIXON. He said that he was in trouble, he had testified before the grand jury that he had not ever talked to Wiley Fairchild about his son's case, and that he had mentioned something about it to Carroll Ingram, and Carroll Ingram had mentioned it to the Federal authorities, and he thought he was going to be—might be indicted for perjury.

Mr. STEWART. What was your response? I'm sorry, go ahead.

Judge NIXON. And he said, judge, there wasn't any such call, was there?

Mr. STEWART. And what was your response?

Judge NIXON. I said, Bud, you know there was a call. You know you called Wiley Fairchild. There was nothing in the world wrong with that as far as I know. I said, I don't know what you told him in the conversation, because I didn't hear it, but there was certainly nothing wrong with it, and if I'm asked about it, I'm certainly going to tell about it.

Mr. STEWART. What was Mr. Holmes' response?

Judge NIXON. Well, he shook his head and he mumbled, he was quite upset, and he was quite, I think, mad at me, because apparently I didn't go along with what he was suggesting.

Mr. STEWART. Have you ever—did you talk much longer than that?

Judge NIXON. No.

Mr. STEWART. OK. Have you ever told Mr. Holmes, on any occasion, that there was no phone call, that it just didn't happen?

Judge NIXON. Of course not, just the opposite, what I just related.

Mr. STEWART. Did you ever have an occasion, after that time you saw him at the courthouse, where the phone call came up?

Judge NIXON. Yes.

Mr. STEWART. And could you describe that briefly?

Judge NIXON. I think it was mid-April of 1985, our chief United States deputy marshal was retiring, and there was a reception given for him down in Gulfport, and I was standing out on the floor, which was well attended by a lot of people, including law enforcement people, and talking to someone, and Bud Holmes came in and walked over to me about the time this other person left that I was talking to, and he said, "Judge, you know that phone call that you said I made," he said, "I don't remember making it. I was drunk and you were sober."

Mr. STEWART. What was your response?

Judge NIXON. Well, before I could respond at all, someone else walked up and, then, he walked off.

Mr. STEWART. Do you recall any other exchange with him on that subject?

Judge NIXON. No.

Mr. STEWART. Judge, now, it's a matter of record here that you've been convicted of two counts of making false statements.

Judge NIXON. Yes.

Mr. STEWART. Now, you've been serving your sentence since March 1988; isn't that right?

Judge NIXON. That's correct.

Mr. STEWART. You're still completing that, aren't you?

Judge NIXON. Yes.

Mr. STEWART. Why, in these circumstances, are you contesting the impeachment?

Judge NIXON. Because, Mr. Stewart, I was wrongly convicted. There has been a miscarriage of justice in this case. I am not guilty of any crime or misdemeanor, and I want to get back to being a United States district judge and contribute, as I have done up until this matter happened when I took myself out of active duty at the time that I was indicted, that was over 16 years then, and now I've been on the bench over 21 years.

Mr. STEWART. Thank you, Judge Nixon. I have no further questions.

The CHAIRMAN. Your witness, Mr. Edwards. What's your pleasure?

Mr. EDWARDS. Mr. Chairman, we are about—we have just gone into session in the House of Representatives. We would like to, with your approval, recess at this time for lunch.

THE CHAIRMAN. Let's do that. We'll begin cross examination promptly at—we will break for lunch and come back in at 2:15.

[Whereupon, at 12:11 p.m., the committee was in recess, to reconvene at 2:15 p.m., the same day.]

AFTERNOON SESSION

The CHAIRMAN. We will resume matters now. Mr. Cardin.

CROSS EXAMINATION

Mr. CARDIN. Thank you, Mr. Chairman.

Judge Nixon, I first want to focus in on the investment, if I might. In 1979, you felt strapped by the judicial salary, in your own words, in dire need of supplemental income; is that correct?

Judge NIXON. That was my testimony, in effect, Mr. Cardin.

Mr. CARDIN. Back in 1979, you didn't know Wiley Fairchild personally, did you?

Judge NIXON. I didn't know him personally. I think we had possibly met somewhere before, but I didn't know.

Mr. CARDIN. But you, nevertheless, asked Carroll Ingram to ask Mr. Fairchild, his client, to put you in investment?

Judge NIXON. I asked him if he would talk to him about it, yes.

Mr. CARDIN. You called Mr. Ingram a couple times, I believe it's been your testimony, to find out if he had spoken to Mr. Fairchild after the initial call?

Judge NIXON. Yes.

Mr. CARDIN. And when you learned that Mr. Fairchild would be delighted to put you in investment, you were pleased?

Judge NIXON. Yes.

Mr. CARDIN. And you consummated the agreement early 1981, I believe it's your testimony, by accepting deeds that were back dated one year?

Judge NIXON. The agreement was formalized in 1981, that is, reduced to writing. The agreement was reached in the early part of 1980 when I met with Mr. Fairchild and Mr. Ingram in Mr. Fairchild's office.

Mr. CARDIN. Now, in 1981 when it was formalized, you signed promissory notes; is that correct?

Judge NIXON. Yes.

Mr. CARDIN. And those notes were also back dated one year?

Judge NIXON. They were dated back by—when I received them, as were the instruments of conveyance. Before I received them, and at the time I received them, they were dated to 19 February 1980, and according to Mr. Ingram when I asked him, was so done to conform with the date that the agreement had been reached.

Mr. CARDIN. My question really deals with the language that was included in the promissory note that indicates, that says the witness execution this 25th day of February, 1980, and that was just not correct. You didn't sign it February 25, 1980, did you?

Judge NIXON. I signed them on the date that I've always said that I signed them in 1981, and I asked Carroll Ingram about it, and Carroll said it was customary and normal in the oil and gas business to transact business that way. Carroll Ingram, in my judgment, was a person of high integrity, and is, and I knew Mr. Fairchild had expertise in the business. The instruments were brought to me in that form, and that's what I did.

Mr. CARDIN. Did you ever raise the issue of dating the instruments currently, but reflecting—dating your signatures currently, but reflecting the date that the deal had been supposedly made in 1980?

Judge NIXON. No, not after what Carroll Ingram told me.

Mr. CARDIN. It never occurred to you that you should reflect the proper date that the instruments were signed?

Judge NIXON. Based upon what Carroll told me.

Mr. CARDIN. Now, the terms of the investments were favorable; were they not?

Judge NIXON. In what respect?

Mr. CARDIN. Did you think the investment terms were favorable or not?

Judge NIXON. I don't know what you mean by the terms.

Mr. CARDIN. Well, let's take the fact that you had to put no out-of-pocket cash to the transaction.

Judge NIXON. Yes. I—that would have been the same as if I had borrowed from a bank.

Mr. CARDIN. But you borrowed the entire \$9,500 from Fairchild Construction Company on an unsecured loan?

Judge NIXON. That's correct. Mr. Fairchild did it that way. It was his idea, apparently, when it came to me, and, of course, I didn't argue with him about it.

Mr. CARDIN. The loan was at 10 percent; was it not?

Judge NIXON. That's the rate he set. He set the price of the investment, and he set the interest rate, and I had nothing, whatsoever, to do with either.

Mr. CARDIN. Now, I asked you whether it was a favorable deal. The 10 percent interest rate was below market; was it not?

Judge NIXON. Well, I understand, now, that it was. At the time, I don't recall whether it was or not, but based upon what came out in the House, I think it probably was.

Mr. CARDIN. Judge Nixon, you had borrowed, in fact, \$10,000 at 15 percent interest from a bank within the same week to finance another investment; isn't that correct?

Judge NIXON. I borrowed money, whether it was the same week or not, I'm not denying it.

Mr. CARDIN. At 10 percent interest?

Judge NIXON. If that's what it says, I'm not denying that.

Mr. CARDIN. And you also knew that the opportunity that you had with Mr. Fairchild was not available to the general public?

Judge NIXON. I didn't know exactly what Mr. Fairchild's, how Mr. Fairchild conducted his business. I had never done business with him before. I thought this was a legitimate business deal and a good business deal. I never asked for anything more or less, and I certainly relied on the integrity of Carroll Ingram and the expertise of Mr. Fairchild.

Mr. CARDIN. Now, you met Mr. Fairchild personally in May 1981, I believe you've testified to?

Judge NIXON. I met him first in 1980.

Mr. CARDIN. After the deeds had been delivered and the promissory notes signed, you had a chance to meet with him in his office?

Judge NIXON. I dropped by to see him in May 1981.

Mr. CARDIN. And at that time you expressed your satisfaction with the—and gratitude for the investment?

Judge NIXON. In effect, I guess you could say that, Mr. Cardin.

Mr. CARDIN. And that is when you said, and I believe you've testified to this, that if I can ever help you, I will, and if I can't, I'll tell you so.

Judge NIXON. Yes, sir.

Mr. CARDIN. You realized that Mr. Fairchild had done you a favor, didn't you?

Judge NIXON. No, I didn't. I asked for a legitimate business deal, and that's what I understand that I got.

Mr. CARDIN. You didn't consider receiving a loan at below market value for 100 percent of the transaction, unsecured, not to be a favor?

Judge NIXON. When Mr. Fairchild set the interest rate, I accepted the rate that he said. If he had said, 15 percent, I'd have signed a note for that. I didn't ask for that and didn't imply that I wanted that in any way, shape, or form, either directly with Mr. Fairchild or through Mr. Ingram.

Mr. CARDIN. Now, in 1981, the promissory notes were signed. About a year later, you started to receive royalty checks, in February 1982; is that correct?

Judge NIXON. I think it was in March 1982, if I'm not mistaken, but it could have been February. All right, I'll accept that, if that's what you say.

Mr. CARDIN. By March 1982, you had received nearly \$7,500 back in royalties, had you not? This is included in exhibit 7, if you want to refer to it, which will give you the information.

Judge NIXON. If you say the records show that, that's fine, because I gave a full accounting of that, I think, to the grand jury, and I wasn't asked to and brought it.

Mr. CARDIN. I believe you testified that the promissory note was due in February 1983.

Judge NIXON. That's correct.

Mr. CARDIN. Even though the promissory note was not yet due, you began paying Mr. Fairchild, repaying Mr. Fairchild on the royalty incomes that you received?

Judge NIXON. I began paying him out of the account that I deposited the royalty interest in. I didn't—I wouldn't say, *per se*, that I paid it with the royalty interests. I'm sure that some of the proceeds that were used to pay it came from the royalty interest.

Mr. CARDIN. Now, you testified last year that you repaid the notes early in order to save interest charges.

Judge NIXON. Repaid one of them early, and the other two I've repaid about four or five days late, in about 1983.

Mr. CARDIN. But did you—was your testimony accurate about repaying that first note in order to save interest?

Judge NIXON. I said that I made a payment on the note, which I had done earlier, to save as much interest as I could, yes, and I had the money to pay on it, so I did.

Mr. CARDIN. But that wasn't entirely accurate, was it, to save interest charges?

Judge NIXON. What do you mean?

Mr. CARDIN. The fact that at the time you owed this note, you also owed bank loans on the other investments that you've testified to at 15 and 18 percent interest. Wouldn't you have paid off the higher interest rates first if you wanted to save interest?

Judge NIXON. Well, if I didn't, I didn't. I don't know. I paid so little attention to my financial affairs. We were so busy with our court dockets. All the way through since I became a United States district judge, I paid too little attention to my financial affairs.

Mr. CARDIN. Could it have been that you decided to prepay the Fairchild loan in an effort to enhance your relationship with Mr. Fairchild?

Judge NIXON. No, sir. If I would have, I would have asked for other investments, and I have never done that, and I don't think anyone has ever said I did.

Mr. CARDIN. We will—I will get to some potential other investments later, if I might.

Judge NIXON. All right.

Mr. CARDIN. Now, during the period that we have just covered, from February 1979 through mid 1982, throughout that period, you were presiding over Federal litigation involving Wiley Fairchild's construction company, were you not?

Judge NIXON. I found that out in this last year, in the House subcommittee hearing. I didn't recall that, and still don't, but that's what the records show, yes.

Mr. CARDIN. And the records show that it was not just one case, but two cases involving Fairchild Construction Company.

Judge NIXON. I think so, and it showed that my participation in those was so minimal, and counsel for both sides, the House and my counsel, have stipulated that I did nothing improper or showed no favoritism to anyone in either one of those two cases; and it's my testimony, as my affidavit stated, with the calendars and the dockets we had, I didn't notice that, that Fairchild was involved in those cases.

Mr. CARDIN. You do not recuse yourself; you didn't disclose your interests in either of those two cases?

Judge NIXON. I would have, if I had noticed that, I would have informed counsel, and I just didn't notice.

Mr. CARDIN. And, in fact, you signed some orders in those cases, did you not?

Judge NIXON. I think, according to the records as shown to me last year, I signed an order that the magistrate had approved, I think, in one case, and I signed, I think, an order of dismissal when the—I think the case against Fairchild was settled voluntarily by the parties. I believe that's correct. I'm not sure. It's been a while since I've seen those.

Mr. CARDIN. Some of the earlier witnesses today indicate that you're a very meticulous judge. But in picking up Mr. Fairchild's involvement in these two cases, you were not very meticulous.

Judge NIXON. When you have a case load of approximately 1,400 cases, active cases, I'm talking about one judge ranking first, second, or third in the nation, you don't have the time to go through all these cases and look and see who the parties are, Mr. Cardin; and many times you sign orders of dismissal. I've had stacks of them and signed them in the morning stipulating dismissals and other orders.

Mr. CARDIN. Just so I understand, it's your contention, despite all the pleadings that were filed naming Fairchild Construction in the cases that you supervised, and that you signed orders concerning Fairchild Construction in conferences between attorneys that you participated in, that you'd never noticed that Fairchild Construction Company was a party to the two cases?

Judge NIXON. Correct.

Mr. CARDIN. By mid 1982, you were fairly pleased with your relationship with Wiley Fairchild; would that be a correct statement?

Judge NIXON. Yes.

Mr. CARDIN. You had entered into other investments——

Judge NIXON. I was pleased with the way the investment was going.

Mr. CARDIN. Right. But you had entered into other investments, I believe you had testified to on direct, and you had either lost money or, perhaps, broke even on the other three investments that you had?

Judge NIXON. Correct.

Mr. CARDIN. This was the most favorable investment that you had?

Judge NIXON. The only one.

Mr. CARDIN. But the Fairchild investment was different. By May 1982, the investment had already paid off beyond the \$9,500 loan, and you were receiving a regular flow of income?

Judge NIXON. Well, yes. But the reason for that, as I understand it, is because the instruments of conveyance, as is normal in the oil and gas industry, stated that the buyer would receive the royalties from the time of production, which was standard in the industry.

Mr. CARDIN. And you had struck up sort of a friendship with Wiley Fairchild at this time?

Judge NIXON. Yes.

Mr. CARDIN. And you were grateful to Wiley Fairchild for the investment?

Judge NIXON. Well, I was very pleased, yes.

Mr. CARDIN. And you had hoped that there would be other investments with Mr. Fairchild; isn't that correct?

Judge NIXON. Well, I guess, I'm only human. I would have hoped that I could make as good an investment as that turned out to be. I didn't know what they were at the time I made them, and just like the other three that didn't turn out good at all, and just like one of these three wells that didn't.

Mr. CARDIN. Now, you had testified this morning about a conversation I believe you said took place in October 1982 where you had indicated to Mr. Fairchild about potential other investments?

Judge NIXON. No.

Mr. CARDIN. Why don't you say again what happened?

Judge NIXON. All right. It was at the reception given for me by the South Central Bar Association when I was elevated to the chief judgeship of the district. Mr. Fairchild was there, among a lot of other people, and I introduced him to my wife, Barbara, and told her who he was, and that he's the one we had invested with; and later during that reception, he came up to me and mentioned something about another possible investment, and told me it might be good, and he might want to talk to me about it; and I told him, well, that's fine, if he did, I would be happy to. But nothing more came of it.

Mr. CARDIN. Let me, if I might, quote from your trial transcript, on page 1668, an answer to a question that was asked concerning that discussion where you answered. The question was, did you express enthusiasm with the notion of more deals with Wiley Fairchild? And you answered, I expressed enthusiasm if it could—would be in something that was as good as the one I was in.

Judge NIXON. Well, certainly, I would have been very happy. I told you that if it had been that type of investment, if I had made, and if it turned out as good, certainly.

Mr. CARDIN. And you spoke with Carroll Ingram concerning other possible investments with Mr. Fairchild?

Judge NIXON. No, except what I told you, that one time on the phone I told Carroll, we were talking in 1983, in the first part of 1983, and I mentioned to Carroll about what Mr. Fairchild had mentioned that to me, which had been in October of 1982, and that there was a possible other investment; and that's the only mention of it.

Mr. CARDIN. Isn't it correct that, in fact, you were ready to talk about more investments when Wiley Fairchild complained to you of being blackmailed in connection with his son's case?

Judge NIXON. What do you mean, I was ready to talk about other things?

Mr. CARDIN. To Mr. Fairchild about more investments?

Judge NIXON. I never did, no. There was no—

Mr. CARDIN. At the time that you were in his office where he mentioned you the blackmail in his son's case, weren't you, at that time, interested in further investments with Mr. Fairchild?

Judge NIXON. If he had brought them up and talked about them, I might have been, Mr. Cardin, based on the success of the others. But nothing was ever mentioned by him or by me with respect to that.

Mr. CARDIN. Other than the October 1982 conversation?

Judge NIXON. Yes. You were talking then about 1981, I think, weren't you?

Mr. CARDIN. No. Just so we're clear, I was talking about the conversation you had with Mr. Fairchild when he brought up the blackmail of his son's case.

Judge NIXON. Oh. There's just the one time in October of 1982, and nothing more came of it.

Mr. CARDIN. My question was, at that time, you were interested in further investments with Mr. Fairchild; you were hoping that he would come forward with additional investments that were as favorable as the one that you had entered into with him?

Judge NIXON. I think I answered that question.

Mr. CARDIN. Isn't it true, judge, that in your meeting with Wiley Fairchild, the meeting that I believe you said took place in March 1983, that's what we have, the date you indicated when you met with Mr. Fairchild?

Judge NIXON. Yes.

Mr. CARDIN. You went to his office, I believe it was your testimony. Isn't it true that in that meeting Mr. Fairchild mentioned he had a son named Drew?

Judge NIXON. I think he mentioned his name. I'm not sure whether he mentioned his name, but he said, in effect, that he had a son who had been involved in a drug matter at the airport, and he thought he had a pretty good deal anyway, he didn't want me to help him, or didn't want me to do anything for him, just what I told the committee earlier.

Mr. CARDIN. And he was complaining that Mr. Holmes was blackmailing him in connection with his son's case; is that correct?

Judge NIXON. Yes.

Mr. CARDIN. And Mr. Fairchild said that—

The VICE CHAIRMAN. What was the answer, counsel? Judge, would you repeat the answer?

Judge NIXON. I think he asked me if Mr. Fairchild mentioned something about his son had been involved in a drug case at Hattiesburg Airport.

The VICE CHAIRMAN. Yes.

Judge NIXON. And I told him that I had—I said, yes, I read about that in the paper. I had read it in February—January when it was—

The VICE CHAIRMAN. I don't want to interrupt the examination, but my understanding is that the question to you was whether you were asked, whether you were told about his son's case. I still don't understand your response to that.

Judge NIXON. Only what I had previously stated, Senator, that he had a son who was—had been involved in a drug matter at the airport, and that's the only thing, never any details about it, or anything else, except what I had previously told the committee that he stated in connection with that, that he didn't want me to do anything at all for him, he was—I think he said he'd given him trouble all his life. He thought he had a pretty good deal anyway, and—but he was tired of the affair. He didn't give a damn of what happened to him, those were his words, but that he thought he was being blackmailed by Bud Holmes and Carroll Ingram could be in on it.

Mr. CARDIN. If I might, I want to go back to the specific question I asked, and that is to whether Mr. Fairchild mentioned he had a son named Drew?

Judge NIXON. I just told you, he could have mentioned his name, I don't know; and the reason I know that now is because we've gone back and, you know, and looked at that. In retrospect, yes.

Mr. CARDIN. Your previous testimony has been very clear, that he did mention his son named Drew.

Judge NIXON. I'm not denying that. I haven't.

Mr. CARDIN. Mr. Fairchild said another person was involved, but had not been prosecuted; is that right?

Judge NIXON. That's correct.

Mr. CARDIN. He complained about unequal justice?

Judge NIXON. Well, I guess, in effect, that's what he was complaining about. He didn't use those words.

Mr. CARDIN. And I believe it's your testimony Mr. Fairchild did not overtly ask you to do anything, but it was clear that he was upset and wanted you to do something?

Judge NIXON. No, sir. I said that he didn't ask me to do anything, and I didn't tell him I was going to do anything, but that, in my mind, I thought that he probably wanted me to pass that matter on to get it straightened out, the blackmail matter, yes.

Mr. CARDIN. Pass it on to whom?

Judge NIXON. From what I gathered, Bud Holmes, and maybe Carroll Ingram.

Mr. CARDIN. So you had the impression that he wanted you to talk to Mr. Holmes or, perhaps, Mr. Ingram?

Judge NIXON. I had that impression; it wasn't said, yes.

Mr. CARDIN. Well, why didn't you say at that time, Wiley, talking with Mr. Holmes about Drew is one of the things I can't do to help you?

Judge NIXON. Because he didn't ask me to do anything, and when I left there, I didn't even intend to.

Mr. CARDIN. So your version of what took place at the meeting with Wiley Fairchild where he mentioned his son's case, is not very different from Mr. Fairchild's version; isn't that correct?

Judge NIXON. Well, I don't recall exactly what his version was, but that's something that——

Mr. CARDIN. You just testified that——

Judge NIXON. The record speaks for itself.

Mr. CARDIN. He testified a couple days ago.

Judge NIXON. Yes, I know. If it was, it was. If it wasn't, it wasn't.

Mr. CARDIN. And when you met with Mr. Holmes—you met with Bud Holmes, then, the same day?

Judge NIXON. Yes, I saw Bud at his home that evening.

Mr. CARDIN. The same day that you met with Mr. Fairchild?

Judge NIXON. Yes, I explained I had called him earlier and was going by to get the records.

Mr. CARDIN. After meeting with Wiley Fairchild, why did you speak with Mr. Holmes about the handling of the drug case?

Judge NIXON. Why did I what?

Mr. CARDIN. Why did you speak to Mr. Holmes about it?

Judge NIXON. What I did was I passed along the complaint of Wiley Fairchild.

Mr. CARDIN. In fact, you were anxious to help Wiley if you could, weren't you?

Judge NIXON. No, Wiley didn't ask me to help him. The reason I passed along the complaint, now that we've gone back and looked at this in hindsight and determined just exactly what, recapitulated what did happen, was to let Bud Holmes know; it was for Bud Holmes' benefit, and, also, to try to get the matter straightened out, not for any other purpose.

Mr. CARDIN. I didn't really ask whether—how Mr. Fairchild felt about it. My question really was, were you anxious to help Wiley Fairchild?

Judge NIXON. No.

Mr. CARDIN. By speaking to Mr. Holmes——

Judge NIXON. Wiley Fairchild didn't ask me to help him.

Mr. CARDIN. But from your impression, by speaking to Mr. Holmes, you were doing what Mr. Fairchild wanted you to do?

Judge NIXON. Based on my impression——

Mr. CARDIN. Yes.

Judge NIXON. Yes.

Mr. CARDIN. Now, at that time, Mr. Holmes was aware of your investment in Wiley Fairchild; isn't that correct?

Judge NIXON. He probably was, because I had asked him previously about Wiley Fairchild as a success in the business before I ever invested, as I testified in the House. He was one of several people I asked whom I knew in Hattiesburg.

Mr. CARDIN. During the conversation that you had with Mr. Holmes, Drew Fairchild's name was mentioned; was it not?

Judge NIXON. I don't think I even mentioned—no, not to my recollection. I didn't mention it, and I don't think Bud Holmes did. It's possible. I think I just said that Mr. Fairchild was complaining about a case that Mr. Holmes was handling involving his son. If I did, if I've said that, I'm not going to deny it, but I don't recall mentioning the name. Do you want to refer me to some—

Mr. CARDIN. But, he did talk about—

Judge NIXON. Do you want to refer me to some part of the previous testimony?

Mr. CARDIN. If you would like, it's excerpt number six, if you'd like to refresh yourself.

Judge NIXON. Well, did it say I referred to him by name?

Mr. CARDIN. The question refers to it by name.

Judge NIXON. The question, but not the answer does?

Mr. CARDIN. Let me, if I might, during this conversation, did you talk with Mr. Holmes about the handling of Drew's drug case? Was that the subject of your conversation?

Judge NIXON. No, sir. The subject of my conversation, as I look back, and I didn't recall any of this until Bud Holmes came and talked to me in February of 1985, it just didn't come to mind. It was such an infinitesimal thing and a no nonsense thing that turned out to be nothing, and it was apparently a misunderstanding cleared up. I just didn't think about it anymore, Mr. Cardin, and—until Bud Holmes came and talked to me about it in February. Why I didn't, I don't know, but I didn't. I wish I had.

Mr. CARDIN. Judge, I guess my question was, in the conversation did you talk about the handling of the Drew Fairchild drug case? Was that mentioned during the conversation?

Judge NIXON. By whom? I—when?

Mr. CARDIN. By either you or—

Judge NIXON. With Holmes?

Mr. CARDIN [continuing]. Mr. Holmes?

Judge NIXON. With Holmes?

Mr. CARDIN. Yes.

Judge NIXON. No. I mentioned the blackmail allegation.

Mr. CARDIN. Now, the blackmail was involved—what case was the blackmail involved with?

Judge NIXON. The blackmail, of course, was involved with that.

Mr. CARDIN. So—

Judge NIXON. Involved with Bud Holmes dragging the Fairchild name through the news media.

Mr. CARDIN. In the *Drew Fairchild* case?

Judge NIXON. Yes.

Mr. CARDIN. OK. Didn't you, also, talk about the fact that only one person, one of the defendants had been brought to trial, to justice, not the other?

Judge NIXON. I told you, now that we went back in retrospect and looked at it and tried to recapitulate what was said, that Mr. Fairchild stated that there was another man involved, besides Drew, who had not been prosecuted.

Mr. CARDIN. In the *Drew Fairchild* case?

Judge NIXON. In the drug—

Mr. CARDIN. Case?

Judge NIXON. Yes.

Mr. CARDIN. Wasn't that discussion or wasn't that a conversation about the *Drew Fairchild* case?

Judge NIXON. We did not—he did not discuss the *Drew Fairchild* case.

Mr. CARDIN. Was that not a conversation about the *Drew Fairchild* case?

Judge NIXON. If it was, it was one-sided, by Mr. Fairchild, because I didn't discuss it with him, and I didn't say anything in response, except I think I probably said, well, let me get out of here, to myself; and I think Mr. Fairchild so confirmed that when he testified.

Mr. CARDIN. Didn't you learn from that conversation that a plea had already been worked out and that Drew would not be going to jail?

Judge NIXON. What Mr. Fairchild said?

Mr. CARDIN. No. This is in conversation with Mr. Holmes.

Judge NIXON. Mr. Holmes didn't go into detail. He just—the only thing he said is, "Well, the damn thing is worked out anyway," and I didn't ask him anything about it, and he didn't tell me anything about it. In fact, he tried to discuss it with me and tell me what it was about, just as he testified, and I told him, I don't want to hear anything about it.

Mr. CARDIN. He told you it had been worked out?

Judge NIXON. He just said, "The damn thing's been worked out anyway."

Mr. CARDIN. All right. This conversation took place at his farm?

Judge NIXON. Yes.

Mr. CARDIN. And you indicated that he had been drinking?

Judge NIXON. He had been drinking quite a bit.

Mr. CARDIN. And you had been drinking, also?

Judge NIXON. I had two drinks. I think that's all.

Mr. CARDIN. And that both of you spoke on the phone with Wiley Fairchild?

Judge NIXON. I told you how that came to pass, yes.

Mr. CARDIN. And that in your telephone conversation with Wiley Fairchild, he thanked you for speaking with Holmes about the handling of Drew Fairchild's case, and he told you, "I'm satisfied."

Judge NIXON. He said, "I'm glad you mentioned that matter to Bud, and I'm satisfied," words to that effect.

Mr. CARDIN. So what I just said, if you could answer that either yes or no, that you thanked him for speaking with Holmes—Mr. Fairchild thanked you for speaking with Holmes about the handling of the *Drew Fairchild* case, and he told you, "I'm satisfied"?

Judge NIXON. I just answered the way I recalled it, Mr. Cardin.

Mr. CARDIN. Let me, if I might, to try to be specific on this point, refer you to stipulation 71 entered into by both counsel.

Judge NIXON. Where is that?

Mr. CARDIN. Perhaps, if you would read stipulation 71?

Judge NIXON. All right, this is the first time I've seen the stipulation, so I will have to read it.

Well, those are the words used by my attorney, apparently, but the words that I recall him saying was exactly what I stated. Now, whether they mean the same thing or not, I'm not going to argue that. He was satisfied. He said, "I'm glad that you mentioned that

matter. I'm pleased that you mentioned that matter to Bud Holmes, and I'm satisfied."

Mr. CARDIN. Would you just read that stipulation, please?

Judge NIXON. Number 71?

Mr. CARDIN. Yes.

Judge NIXON. "In his telephone conversation with Judge Nixon, Wiley Fairchild thanked Judge Nixon for speaking with Mr. Holmes about the handling of Drew Fairchild's case and told Judge Nixon, I'm satisfied."

Mr. CARDIN. Thank you, Judge.

And is it also true during that conversation that you had with Mr. Holmes, you didn't say—or in your conversation on the telephone with Mr. Fairchild, that you didn't say anything in that telephone conversation to suggest that you didn't do anything to help Drew?

Judge NIXON. The sum and substance of what was said, I've already stated.

Mr. CARDIN. You and Mr. Holmes disagreed about certain details of what was said; isn't that correct?

Judge NIXON. Yes.

Mr. CARDIN. For example, Mr. Holmes testified that you told him that Wiley had asked you to put in a good word for Drew?

Judge NIXON. Depending on which of Mr. Holmes' grand jury testimony you're going to use, the first three times or the fourth time, because they all differed each time before the grand jury.

Mr. CARDIN. I believe his testimony before the committee, this committee has been that he indicated that Wiley had asked you to put in a good word for Drew, or something similar to that; and that's not your recollection?

Judge NIXON. That's correct.

Mr. CARDIN. Yet, Mr. Ingram has testified that it is basically what you indicated in your conversation to Mr. Ingram just, I think you said a couple weeks after your phone conversation—

Judge NIXON. I've related what took place, and I think Carroll Ingram testified that he didn't know exactly what was said in that conversation, that it was vague and very general, and he didn't even dwell on it or ask anything about it. That's my recollection of his testimony. Everybody might have a different recollection of it, but that was mine.

Mr. CARDIN. Mr. Holmes testified that in the phone call you stated to Mr. Fairchild, "You know that man we're talking about, well, I'm out at his farm, and everything is going to be taken care of to your satisfaction." Do you recall Mr. Holmes testifying to that?

Judge NIXON. Yes.

Mr. CARDIN. Your recollection of that, that didn't happen that way?

Judge NIXON. It did not happen.

Mr. CARDIN. And yet, Wiley Fairchild has testified before this committee that that was pretty much the way the conversation went. Mr. Fairchild's wrong, also?

Judge NIXON. Is that a question or is that a statement?

Mr. CARDIN. Yes. I'm just asking you if Mr. Fairchild is wrong, also?

Judge NIXON. I don't remember exactly what his testimony was.
Mr. CARDIN. Mr. Holmes believes that you made the telephone call to Mr. Fairchild that night; he had so testified, didn't he?

Judge NIXON. When?

Mr. CARDIN. The night that you were at the farm house he testified that—

Judge NIXON. No. That's not my question.

What time are you talking about that Mr. Holmes indicated that, because if you look at all of his grand jury appearances, in each one that he said anything about it, it was different, and in the House it was different.

Mr. CARDIN. Judge Nixon, I was referring to his testimony before this committee, just a few days ago.

Judge NIXON. Oh, all right. All right.

Mr. CARDIN. Isn't it correct that Mr. Holmes indicated that you placed that phone call?

Judge NIXON. That's what he said.

Mr. CARDIN. Yet, also, Mr. Wiley Fairchild has, also, testified before this committee that he believes you placed that phone call. Both of those gentlemen are wrong?

Judge NIXON. Before the committee he testified that way, yes.

Mr. CARDIN. Let me turn to the question of when your meeting with Mr. Fairchild, your visit to the Holmes' farm and the telephone call took place, if I might. Mr. Fairchild, Mr. Holmes, Mr. Ingram, all told this committee that they believe these events took place before Drew Fairchild's case was passed to the files in December 1982; do you recall their testimonies?

Judge NIXON. I think so.

Mr. CARDIN. And you deny this and contend the events took place in March 1983, after Drew's case was passed to the files?

Judge NIXON. Absolutely, because I referred to the newspaper article that I had seen about the *Drew Fairchild* case being passed to the files and being brought back out again and criticizing Bud Holmes' handling of it in that respect, and that was in January 1983.

Mr. CARDIN. Now, you regularly visited Bud Holmes when you were in Hattiesburg, didn't you?

Judge NIXON. Quite a bit, yes.

Mr. CARDIN. Now, I want to go to the May 14, 1982, date you testified to on direct examination.

Judge NIXON. All right.

Mr. CARDIN. Do you recall that for the jury in the criminal case that you were positive that you did not spend one minute in Hattiesburg on May 14, 1982.

Judge NIXON. I've already explained that. We thought, honestly thought I was not there. The medical records—and I referred to the fact that if I was there, it would have been for a dental or doctor's appointment; and as it turned—in my testimony—and as it turned out, the dental records that the Government had in its possession at that time, and which my wife had already been told by that dentist that the Government had taken those records, before that time, before the trial, showed that I was there.

Mr. CARDIN. So if you're—

Judge NIXON. And if I would have been trying to in any way hide the fact that I was there, I would not have referred to the dental records of Doctor—the fact that if I had been in Hattiesburg, it would have had to have been for a dental or doctor's appointment, which I so testified; and we checked with the other dentist, whose records the Government did not have, my wife called my little girl's Montessori school to see if anything was going on that day, we checked with the United States magistrate, we checked with my secretary, we checked with friends who might know where I was that afternoon, because I was in Biloxi in court that morning, to try to make sure that I was or was not in Hattiesburg, and we could find no evidence that I was there for any reason, no business reason or any other reason. And it turned out that the dental records showed I was there for a dental appointment, emergency dental appointment.

Mr. CARDIN. Judge Nixon, I was just trying to refer to your testimony at your criminal trial where you said that you were positive that you did not spend one minute in Hattiesburg; that was in error?

Judge NIXON. And I've already told you on direct examination that was an honest mistake, Mr. Cardin?

Mr. CARDIN. In fact, you were in Hattiesburg on May 14, 1982?

Judge NIXON. The record so indicates, so I was, yes.

Mr. CARDIN. And you were at a dentist's office?

Judge NIXON. Apparently so.

Mr. CARDIN. Do you remember what you did after going to the dentist's office on that day?

Judge NIXON. No. If I would have remembered that, I would remember being in Hattiesburg that day and being at the dentist's office.

Mr. CARDIN. Well, I'm, perhaps, asking whether you, today, can recall where you went after that dentist appointment?

Judge NIXON. No, I can't.

Mr. CARDIN. Do you recall, perhaps, seeing Carroll Ingram on that day?

Judge NIXON. I don't recall one way or the other.

Mr. CARDIN. Wasn't Carroll Ingram the one who introduced you to Dr. York and drove you to Dr. York's office because this was the first visit?

Judge NIXON. I don't know whether Carroll drove me there or not. He could have. I'm not denying it, but he's the one who referred me to Dr. York, the oral surgeon for the oral surgery that I had—

Mr. CARDIN. After the dental work, you stopped—

Judge NIXON [continuing]. Recommended Dr. York, excuse me.

Mr. CARDIN. Isn't it correct that after the dental work you stopped by to see Bud Holmes at the D.A.'s office, like you regularly do when you're in Hattiesburg?

Judge NIXON. Mr. Cardin, I told you already, if I knew what I was doing there, I would have certainly testified that I had been there. I did not believe that I was in Hattiesburg. It turns out I was. I don't remember any of the details about what took place that day. I can't admit or deny any place that I was that day in Hattiesburg.

Mr. CARDIN. The reason I'm asking——

Judge NIXON. Whatever the records show, if you have any evidence, that's what they show. I'm not denying that.

Mr. CARDIN. And I'm just trying to, if I could, have you recall as much as you can because, as you know, Bud Holmes' recollection was that was the date that you and Carroll Ingram came to his office, and, then, from there you all went out to the farm. You know that; you know Mr. Ingram's testimony.

Judge NIXON. Not Mr. Ingram's testimony.

Mr. CARDIN. Bud Holmes' testimony.

Judge NIXON. Mr. Ingram said he never was there with me at Mr. Holmes' office. That was his testimony.

Mr. CARDIN. My apology. Mr. Holmes' testimony, you're aware of that?

Judge NIXON. Yes.

Mr. CARDIN. Judge Nixon——

Judge NIXON. Also, his calendar showed that on May the 13th, and they changed it to May the 14th later.

Mr. CARDIN. Judge Nixon, in order to be as fair as we can on the information, we do intend to introduce an exhibit in rebuttal, and I would like to show it to you now to help, perhaps, refresh your recollection about the date in question, May 14, 1982. It deals with certain phone calls.

Judge NIXON. Rebuttal to what, Mr. Cardin?

Mr. CARDIN. To your testimony.

Judge NIXON. To what answer in my testimony?

Mr. STEWART. Mr. Chairman, what are we doing here? He said he didn't remember where he was.

The CHAIRMAN. What kind of exhibit do you have, how are you characterizing it?

Mr. CARDIN. We have some telephone records that will reflect telephone calls made on that particular afternoon that I would like to show to Judge Nixon to see whether that can help refresh his recollection of that incident.

The CHAIRMAN. You can show it to him, Mr. Cardin, but I don't see the overall relevancy of continuing this line of questioning on that day. Judge Nixon says, he doesn't—he admits now that he was there, but he doesn't remember why he was there or what he was doing, and I don't think you're going to be able to change that.

Mr. CARDIN. Mr. Chairman, if I could, I think I can wrap this up rather quickly if I could show him the exhibit and see——

The CHAIRMAN. Show it to him; see what he has to say.

Mr. STEWART. Can I see a copy?

[Mr. Keith hands document to Judge Nixon.]

Mr. STEWART. Is there a good explanation why this wasn't provided to the committee beforehand? It doesn't appear to be a last minute inspiration on behalf of Mr. Cardin here.

Mr. CARDIN. It was not an exhibit that we had filed. It was information that we found that may be useful in rebuttal, and it was discovered after testimony.

Mr. STEWART. This isn't rebuttal. This is cross-examination.

The CHAIRMAN. Well, wait a minute. Wait a minute. Wait a minute. Let's see if we can't wrap this up.

He's entitled, in the legal sense of the word, he's obviously trying to "impeach," with a little "i," the witness on his remembrance. He's entitled to do that. If these records jog the judge's memory, he'll say. If they don't, they won't. We're not going to go on this too much longer.

Mr. CARDIN. Thank you, Mr. Chairman.

Mr. STEWART. I'd only note it's a very small "i."

Mr. CARDIN. Judge Nixon, what I have put in front of you is a reimbursement form for certain telephone calls that is signed by you, I believe, on the first page; is that correct?

Judge NIXON. Yes.

Mr. CARDIN. If you could—attached to that voucher are copies of your telephone bills, I believe?

Judge NIXON. Apparently so. I've never seen it before, I mean, what you're handing to me, all of this information.

Mr. CARDIN. I would just like to call your attention to page 3 of the telephone bill. The last phone call indicates that on May 14, 1982, at 4:15 p.m., that a telephone call was made from Hattiesburg to Biloxi. Does this record—I believe you find that—was charged to Biloxi—I believe you find that that telephone number, 436-4317, do you know that number?

Judge NIXON. Yes.

Mr. CARDIN. What number is that?

Judge NIXON. My chambers in Biloxi.

Mr. CARDIN. And a call was charged to your chamber made from Hattiesburg. Do you know the number of that Hattiesburg—if I were to tell you that that is Carroll Ingram's number, would that help refresh your recollection of being in his office on the afternoon of May 14th?

Judge NIXON. No, sir. I was in Carroll Ingram's office several times, I have been.

Mr. CARDIN. And on the next page, the next telephone call made approximately one hour later, again, charged this time, I believe, to your home telephone, 875-2082, that's your home telephone number?

Judge NIXON. Yes, it is.

Mr. CARDIN. The telephone call was charged to your home, and, I believe, if I were to tell you that the telephone number that the call was made from, 545-1552, was Bud Holmes' office, would that help refresh your recollection that you were in Mr. Holmes' office that afternoon?

Judge NIXON. No, sir, it doesn't. As I told you before, if I remembered where I was in Hattiesburg, I would have remembered being in Hattiesburg; and I don't remember being in Hattiesburg, but I don't deny any of this.

Mr. CARDIN. Thank you.

Judge NIXON. Because I don't recall.

The CHAIRMAN. All right. Let's go on to something else.

Mr. CARDIN. Judge Nixon, before we turn to the specific statements in the Articles of Impeachment, I want to ask you about what was going through your mind at the time these events were taking place.

You indicated you were shocked by Mr. Fairchild's complaint of blackmail, weren't you?

Judge NIXON. I was taken aback, certainly.

Mr. CARDIN. I believe the word that you had used, at least at your trial, was that you were shocked.

Judge NIXON. Well, I was—I might have been, but I knew he was sincere, but I didn't think there was a thing in the world to it, because I didn't think Bud Holmes would be blackmailing him, and I knew Carroll Ingram wasn't.

Mr. CARDIN. But if it's true, it would be a very serious matter; isn't that right?

Judge NIXON. Well, not in that context, no.

Mr. CARDIN. All right. So if he's being blackmailed by Bud Holmes is not a serious matter?

Judge NIXON. As I heard it, he was referring to the Fairchild name being dragged through the news media. He used the word "blackmail," and I didn't consider that a definition of blackmail.

Mr. CARDIN. He was more concerned about his good name?

Judge NIXON. Of course, at that time, I did not know, and learned later in my trial for the first time, that Bud Holmes indicted Drew Fairchild to get Bill Porter's legal fee, and, to say the least, that was a shock.

Mr. CARDIN. It did indicate to you that one person was being prosecuted and another is not. Wouldn't it also be a miscarriage of justice to prosecute one guilty party in a drug conspiracy, but to let another man, who is also guilty, go free?

Judge NIXON. That wasn't my case. I had no connection with that. It was a State court matter, and Mr. Fairchild mentioned that, yes.

Mr. CARDIN. That was a very serious charge; was it not?

Judge NIXON. I don't know. Many times the State prosecutor has a reason not to proceed against one person and use him against another. I think that happens. Apparently, they were doing that with—apparently, the U.S. attorney was doing that in this case, but for some strange and mysterious reason it wound up in State Court and wasn't prosecuted in Federal court.

Mr. CARDIN. My question was, if it were true, if his allegations were correct, aren't they very serious matters?

Judge NIXON. It would depend on all the circumstances.

Mr. CARDIN. And you've previously testified that you wanted to get out of Mr. Fairchild's office as quickly as you could?

Judge NIXON. Yes, sir.

Mr. CARDIN. And you've testified at the criminal trial that you got caught in the middle, and you wanted to get out as fast as you could?

Judge NIXON. Well, I don't know about being caught in the middle, if I used those words, I'm not going to, you know, change it; but what I was talking about is I—I think I've already explained it to you several times.

Mr. CARDIN. Well——

Judge NIXON. If you want me to go back over it again, I will.

Mr. CARDIN. Well, let me just ask you this question.

Judge NIXON. There was Mr. Fairchild accusing these people of some type of blackmail, and long time friends of mine who I thought were honorable people, and I didn't think there was a thing to it.

Mr. CARDIN. I want to put you again in Mr. Fairchild's office.

Judge NIXON. I thought it was a misunderstanding of some kind.

Mr. CARDIN. I want to put you in Mr. Fairchild's office again when he's telling you this information, and you found it very embarrassing, as a Federal judge, to hear this.

Judge NIXON. I know I used that word before, if we've got a play on words, I don't know, I guess I was very uncomfortable, if you want to put it that way. I wasn't exactly embarrassed. I might have used that word ill-advisedly, but it was a situation that I certainly wished that I had not been in.

Mr. CARDIN. Didn't you think that your I.O.U was being called in by Mr. Fairchild?

Judge NIXON. Absolutely not. Mr. Fairchild didn't ask me to do a thing, and he told me he didn't want—by his own admission, hearing his testimony, you were talking about his, he didn't want me to do a thing in the world for Drew Fairchild. I understand they weren't even talking at that time. He wasn't soliciting any help for him. He just didn't like the Fairchild name being drug through the news media.

Mr. CARDIN. Judge, I was just trying to concentrate on what you thought was happening, not to go back over the entire testimony.

Judge NIXON. No. My answer to that is, absolutely not.

Mr. CARDIN. And you were disgusted by what happened at Bud Holmes' farm, weren't you?

Judge NIXON. I was—yes, I said, "disgusted," and I think I used that word at one time. I didn't appreciate Bud Holmes just calling me over and handing me the telephone and saying, "Here, talk to Wiley Fairchild about that blackmail matter," is what—he didn't say it in those words, but "Here, talk to Wiley Fairchild," it only had—could be about the blackmail matter, because that's the only thing that either—Wiley had discussed with me and I had passed on to Bud Holmes.

Mr. CARDIN. You had these feelings and, yet, you didn't hesitate to mention to Carroll Ingram that you had given help for Drew in the same breath as you were talking about other possible investments with Wiley Fairchild.

Judge NIXON. I didn't tell Carroll Ingram I had given help for Drew. No one has testified to that, and that's not correct.

Mr. CARDIN. Now, when the Federal investigators came to interview you, they told you they were investigating the handling of the Drew Fairchild drug case; is that correct?

Judge NIXON. They told me that they were looking into the question of my oil and gas investment with Wiley Fairchild. They thought it might be an "imbalanced," is a word they used, transaction. Also, they were looking into the handling of the *Drew Fairchild* case on the Federal level, and thirdly, whether there was a connection between those two matters.

Mr. CARDIN. I'm going to ask, if you would, referring to Exhibit 1 that's in the black book, which is the summary of the investigation by the interview with the FBI.

Judge NIXON. All right.

Mr. CARDIN. Page 37 of exhibit 1, you asked Mr. Weingarten, "Well, what's the allegation?" Do you see that?

Judge NIXON. At the bottom, yes.

Mr. CARDIN. And the answer, "The allegation is the *Fairchild* case was mishandled, number one, in the courts," and then you said, "By whom?" and they answered, "Well, that's loose, frankly, and we're obligated by the information to look at it from top to bottom, from the bust in August 1980, until today."

Judge NIXON. Why don't you read the rest of it, Mr. Cardin?

Mr. CARDIN. Sure. And that's, "Generally speaking, the allegation"—

[Pause.]

Mr. CARDIN. I'm now at the top of page 38. "Well, that's loose frankly, and we're obligated by the information to look at it from top to bottom, from the bust in August 1980, until today; and that's generally speaking, the allegation. And in the course of receiving the information, it was alleged, as well, that there was a transfer of property, an imbalanced transfer of property to you from Wiley Fairchild. That's the sum and substance of it."

Judge NIXON. Exactly. That's exactly what he told me before the tape was turned on. He said it was on the Federal level, and whether there was a connection between that and the oil and gas transaction, which he says again here, and whether there was a connection—whether there was an imbalanced oil and gas transfer and a connection between the two; and that's exactly what he's saying again, or led me to believe he was saying again.

Mr. CARDIN. But you knew that they were looking at the case, the entire case?

Judge NIXON. I can only quote what Mr. Weingarten told me.

Mr. CARDIN. Perhaps, on page 45, top of page 45, if you would read for the committee, again from the FBI interview?

Judge NIXON. You want me to read all this, or what are you—

Mr. CARDIN. Read the first couple of questions, if you would? I want to read down to the second answer.

Judge NIXON. Excuse me. Where do you want me to start?

Mr. CARDIN. Start with, "Judge Nixon, obviously you said he was indicted in the State," Weingarten. See where I am?

Judge NIXON. I told Mr. Weingarten, "Obviously, you said he was indicted in the state." And he said, "Yes, right, it was never presented Federally." And I said, "I see," and he said, "And he pled guilty in January 1982," and I said, "Um-hum," and, then, he said, "In December 1982, 11 months later, the case was passed to files, was returned to the files, from files to active list, he's never been sentenced, and it's April of 1984." He goes on to say, "You don't have to be a genius or a particularly sophisticated FBI agent to want to know why a case from August of 1980 has never been resolved to this day, and when the evidence appears to be extremely strong, that's the focus of the investigation. In addition, we received information from the same source, and I don't want to use the word sweetheart, but the word imbalanced financial relationship developed between this Mr. Fairchild, Drew's father, and you, the chief judge of the district," and we go on to say, "I don't know what influence the Chief Federal U.S. District Judge could have with this case," and we go on to the next page and it says—

Mr. CARDIN. Judge, you can read as much as you want. There's no need for me—

Judge NIXON. I think we need, in all fairness, to read it all in context, Mr. Cardin.

Mr. CARDIN. Sure.

Judge NIXON. Because it all relates.

Mr. CARDIN. Fine.

Judge NIXON. And then it goes on to say, "When was it transferred to the State? I mean, when was it presented to the State or when was he indicted?" And then we go on from there. So we're referring to the steering of the case from the State to the Federal court and the imbalanced transfer, or alleged imbalanced transfer, and the connection between them, just what he focused me in on to begin with.

Mr. CARDIN. He, also, very specifically said that the focus of the allegations that you've read dealt with the handling of the case and the long period of time between sentencing.

Now, you knew very well that the investigation was looking into the handling of the State case; correct?

Judge NIXON. Not as far as I was concerned.

Mr. CARDIN. Then, why in your press release, issued the day after your grand jury testimony, did you say, "I have read in the," and I'm quoting you from your news conference, "I have read in the newspaper of a reported investigation of the handling of State drug cases against Drew Fairchild and others. The history of these cases can be provided by State authorities."

Judge NIXON. Because that's where the case was at that particular time. It was no longer in Federal court. It was a State court case. Apparently, that's what he told me, and that's, I think, what the record shows.

Mr. CARDIN. My question before that is that you knew very well that they were investigating and looking at the handling of the Drew Fairchild State case?

Judge NIXON. Which was a State case at the time is the way I understood it, and that's correct.

Mr. CARDIN. Now, I want to—

Judge NIXON. We've got to remember the oil and gas transaction was completed in 1981.

Mr. CARDIN. I want to ask you some specific questions about your interview with the FBI in your grand jury testimony. But, if I might, first, there is no question from your testimony that at the time of those, the interview and your grand jury testimony, you were aware that you had met with Wiley Fairchild when he spoke to you about his son's case and that you went to Bud Holmes' farm and subsequently spoke with Mr. Fairchild on the telephone?

Judge NIXON. No, sir; that's it. I was not—that was somewhere in my mind, I'm sure, in my recollect, but it was not foremost, and no question was asked to even trigger that; and I wish he had asked it. If he was investigating it from top to bottom, I don't know why he didn't ask me about the blackmail allegation.

Mr. CARDIN. Let me read, if I might, from your subcommittee testimony. This is excerpt number 2, which is found on exhibit 26 of the House managers—

Judge NIXON. Where is this now?

Mr. CARDIN. It's on exhibit 26, page 3 of exhibit 26.

The CHAIRMAN. Wait a minute. Let him find it.

Judge NIXON. Excerpt Number 2; is that it?

Mr. CARDIN. Yes.

Judge NIXON. All right.

Mr. CARDIN. This is by your own counsel, "While you were in there appearing before the grand jury, did you, in fact—were you aware of the fact that there had been a discussion between you—excuse me—that there was a meeting where you were over at Wiley's office and, then, you had been at Bud's farm that evening and the phone call, were you aware of that when you were in the grand jury?" Your answer, "Yes."

The next question, "Now, at the time you gave that interview with Mr. Weingarten, and this is April 1984, were you aware at the same level that you had had this previous conversation you had described in March 1983 with Mr. Fairchild concerning his blackmail allegation?" Your answer, "Well, of course, I knew it had occurred. It was, I'm sure, in my recollection, but it was not foremost in the course of my mind."

Judge NIXON. Exactly what I said, and no question was asked to trigger it. I simply did not recall it at the time.

Mr. CARDIN. And when you testified before the grand jury, you swore to tell the truth, the whole truth, and nothing but the truth; correct?

Judge NIXON. Yes.

Mr. CARDIN. And you knew you had some obligation when you answered questions during—you knew you had the same obligations when you answered the questions in the April FBI interview, to tell the truth, the whole truth, and nothing but the truth?

Judge NIXON. Yes, and I certainly tried to. If I'd been given some notice about what they were coming to talk to me about, I'd have had more time to look into it and try to reconstruct some matters. As you could tell from the interview, it caught me—I was just hit cold on matters that had happened, apparently, from one to five years before, four-and-a-half years before, and I gave them the interview anyway and let them record it.

Mr. CARDIN. Well, let's turn to Tab A of exhibit 3, if we might? I want to start on page 25—

The CHAIRMAN. Identify what you read.

Mr. CARDIN. I want to focus in on some of the specific statements. Page 25—

The CHAIRMAN. What is Tab A, page 25?

Mr. CARDIN. I'm sorry. It's the FBI interview.

Judge NIXON. What, are you taking excerpts out of it, lifting parts of it, or is this a complete text?

Mr. CARDIN. I will be asking you certain questions about it and asking you to read certain passages.

Judge NIXON. Well, I don't think that's a fair way to ask me, Mr. Cardin. I think I should have the entire—and the committee should have the entire interview before them, because there are different parts that relate to other parts, just as I pointed out to you a while ago; and it has to be taken in context, and it's unfair to pick out excerpts out of this matter and ask me about them, because I can't relate them to questions that came before or after.

Mr. CARDIN. I understand, judge. Your counsel will have an opportunity.

The CHAIRMAN. Judge Nixon, the committee has the entire transcript before us, as you know, but he can ask you and you can explain and elaborate any response.

Judge NIXON. My point, Mr. Chairman, is I can't do that without also having the entire transcript before me.

Mr. STEWART. Perhaps, I could propose, Mr. Chairman, that the questioning be done from exhibit 1, which is the full transcript.

The CHAIRMAN. I misunderstood, and I appreciate both of you. Question him from the—thank you for the correction. Question him from the entire transcript—

Mr. CARDIN. OK.

The CHAIRMAN [continuing]. Of the interview, and ask him the questions from those pages.

Mr. CARDIN. If the committee would just bear with us, we'll pull it out on exhibit 1. It might just take a moment or two longer.

The first is on page 25, I guess, of exhibit 1, the highlighted sections, if you would read it, please?

The CHAIRMAN. Exhibit 1, page 25, right, in the black book for all the committee?

Mr. CARDIN. The sections, now, will not be highlighted, so I'll have to, at least, refer to the sections we want read.

The CHAIRMAN. All right.

Mr. CARDIN. You're starting on the fourth line, going through that question and answer only.

[Pause.]

The CHAIRMAN. In the interest of time, Mr. Cardin, why don't you read to Judge Nixon the part that you want, the question and answer—

Mr. CARDIN. OK. Fine.

The CHAIRMAN [continuing]. And then ask a question to him based on what you read?

Mr. CARDIN. Weingarten, "Was there any other possible business that you discussed with him, other than these three wells? I mean, would—" Answer, by Judge Nixon, "Not to my knowledge. I certainly never discussed anything about his son's case."

Judge NIXON. We were talking that time about the time we were making the oil and gas deal, if you'll refer back to the previous page.

Mr. CARDIN. So, your testimony here was, up to the point—

Judge NIXON. And that's correct.

Mr. CARDIN [continuing]. Of the conversations with the oil and gas deal, you had not talked about the *Drew Fairchild* case?

Judge NIXON. Absolutely.

Mr. CARDIN. So that question, at least as you interpreted, had nothing to do with subsequent conversations you had with Mr. Fairchild in March 1983?

Judge NIXON. That question did not.

Mr. CARDIN. Page 31. Reading from page 31, reading down around the seventh line, Mr. Weingarten, "From the time of that bust until basically me talking to you about the case—" Judge Nixon, "Um-hum." Weingarten, "—you had no connection, no knowledge of it and no participation?" Judge Nixon, "Correct." Weingarten, "The *Drew Fairchild* case?" Judge Nixon, "Absolutely, except something I read in the paper."

Now, given what you've told us about your version of the events, to say that you had absolutely no knowledge of the case, except what you read in the paper is simply false; isn't it?

Judge NIXON. Mr. Cardin, I told you that I did not, at that time, recall. It was not—I had no recall about that March 11 conversation, because it amounted to nothing. It's been blown up so much now and magnified. But back then, it amounted to nothing. It resulted in nothing. Everything had been—I thought any misunderstanding apparently had been satisfied; and, I guess, that's why I didn't think about it. I don't know why I didn't, but I didn't. I honestly did not. I wish I had, and I wish they had asked me something about a blackmail allegation. That would have probably triggered it. But they didn't ask me that.

Mr. CARDIN. But the statement itself is——

Judge NIXON. Weingarten didn't, or White-Spunner.

Mr. CARDIN. But isn't it correct that the statement, the question and answer simply is just not true?

Judge NIXON. I told you that in my judgment it was true when I made it. I had no intent to hide anything. Certainly, there was nothing there to hide. There was no, no crime of any kind, no illegal activity, no nothing. If I had thought about it, I certainly would have mentioned it, but I did not think about it.

Mr. CARDIN. Judge, I understand the fact that you've testified that you just didn't recall that at the time the question was answered.

Judge NIXON. That's right. Correct.

Mr. CARDIN. I'm asking you whether the question—whether the answer is factually correct?

Mr. STEWART. Mr. Chairman, I was not allowed to ask the same question three times, and I think we're getting into the third time, here, on this question.

Mr. CARDIN. If I could call your attention——

The CHAIRMAN. Go on, Mr. Cardin.

Mr. CARDIN. If I could call your attention to page 32, about starting with the third, the second question asked by Mr. Weingarten, "Do you recall any knowledge of the case, meaning the *Fairchild* case, while you were dealing with Wiley Fairchild?" Judge Nixon, "No."

Mr. Weingarten, "And he certainly never brought it up?" Judge Nixon, "Not to my recollection. I think I would recall that."

And my question to you, could you please explain to us how those two answers can possibly be true?

Judge NIXON. If you'll read the question again, "Do you recall any knowledge of the case, meaning the Fairchild case, while you were dealing with Wiley Fairchild?" And I was dealing with Wiley Fairchild from 1980 until the time the deal was consummated in the first part of 1981. So that is a correct answer.

Mr. CARDIN. You didn't consider receiving royalties as having a continued relationship?

Judge NIXON. I wasn't dealing with him. It's like having bought something from someone.

Mr. CARDIN. Checks were written by Mr. Fairchild's company to you.

Judge NIXON. If you buy something from someone, oil and gas interest, you're not dealing with that person, in my judgment. I took the word "dealing" to mean, entering into a deal, to consummate a deal, to consummate a transaction.

Mr. CARDIN. So you made the conscientious decision in this interview that they were not interested in what happened after you received the deeds?

Judge NIXON. But even if that's not the case, Mr. Cardin, I told you, and I'm telling you again, I have no recall of the March 11 conversations. They amounted to nothing, and I just had no recall of them. I wish I had been asked about a blackmail allegation, and I probably would have recalled.

Mr. CARDIN. Well, now, I'm not sure I understand your answer. Your answer is that you didn't recall the conversation and, therefore, you didn't mention it, or was it that you weren't dealing with Mr. Fairchild?

Judge NIXON. No, I didn't recall. What I said the question here referred to the time that I was dealing with him. That's the question you asked me about, and that's the way I understood it, and that's a correct answer.

Mr. CARDIN. And, of course, if, in fact, the conversation took place before the case was passed to the file, you would have still owed Mr. Fairchild money?

Judge NIXON. I didn't understand your question.

Mr. CARDIN. If, in fact, your conversation with Mr. Fairchild took place prior to the case being passed to the file, you would have still owed him money at that time, under the promissory notes? The promissory notes weren't paid off until 1983.

Judge NIXON. They were paid off in February of 1983.

Mr. CARDIN. If we could—

Judge NIXON. In fact, one of them had already been paid off before, and the other two were paid off right after the due date.

Mr. CARDIN. Move on to page 33. Mr. Weingarten asked you, this is about, a little past halfway down, "Does he work with his father?" Judge Nixon, "I have no idea, didn't even know he existed, except for what I read about that and what you just told me, absolutely, no."

Now, once again, Judge Nixon, isn't that just wrong?

Judge NIXON. Mr. Cardin, I told you I did not recall the matters of March 11th. I honestly did not when I was questioned, a lot of things I didn't recall.

Mr. CARDIN. You didn't recall the fact that you—

Judge NIXON. And I was hit cold with all this, and, in any event, I never did recall because it amounted to a nothing.

Mr. CARDIN. So you recalled what you read in the paper, but you didn't recall the conversation with Mr. Fairchild?

Judge NIXON. I don't understand that question.

Mr. CARDIN. Well, I think you've testified, you've indicated during your interview that you recall the articles in the paper, but you didn't recall any conversations.

Judge NIXON. I said later, when we went back and looked at all of this matter and tried to reconstruct in hindsight.

The CHAIRMAN. Mr. Cardin, I'm not limiting, except for the fact that you've been questioning Judge Nixon for about an hour and 15

minutes, and I just refer you, again, if you can, to hone in on the Articles of Impeachment as charged. That's sufficient discussion of his business relationship with Mr. Fairchild. See if you can go from there.

Mr. CARDIN. OK. I will try to move very quickly through some of the other specific matters that are referred to in the articles of impeachment.

On page 37 of the exhibit 1, the FBI interview, your answer on top, "Well, I don't"—

Judge NIXON. Page 37?

Mr. CARDIN. Page 37, yes.

Judge NIXON. I'm sorry. Excuse me.

Mr. CARDIN. Your answer in response to, "I mean, you're a savvy guy, you know that this happens," and your answer, "Well, I"—

Senator REID. What was the question? We don't have it here.

Mr. CARDIN. The question is on page 36, which says—the question I don't think is going to help us on the answer. I'm just trying to get the statement that Judge Nixon made at this particular time. It's more the statement than it is an answer to a question.

Senator REID. Can we have the question?

Mr. CARDIN. Sure. The question is—let me give you the background as to where we are. Mr. Weingarten, "I mean, I—our earnest desire is to wrap this end of it." Judge Nixon, "I understand." Mr. Weingarten, "Completely, and oftentimes judges are victimized by others." Judge Nixon, "Well, yeah, well, I don't." Mr. Weingarten, "I mean, you're a savvy guy. You know that this happens." Judge Nixon, "Well, I don't know about that part of it, but all I know is, ah, nothing was done or nothing was ever mentioned about Wiley Fairchild's son, and I defy anybody to—and I say defy—I don't mean (unintelligible) but I challenge anybody to show any connection of anything I've ever done in connection with Wiley Fairchild's son's case. I certainly would (unintelligible) to begin with, and if I even suspected something like that was going on, I certainly wouldn't have invested or have any dealings absolutely."

Senator REID. Is there a question?

Mr. CARDIN. I was just—

Judge NIXON. Have you asked me a question?

Mr. CARDIN. No. Even your version of those events, Wiley Fairchild was complaining about the handling of the case, and you passed it on to Mr. Holmes. So, again, is that not factually—

Judge NIXON. Mr. Cardin, I don't mean any disrespect to you, but if you read the last few lines that you just read, it certainly states what I was referring to, and if I had suspected something like that was going on, I wouldn't have invested or had any dealings, absolutely. So it had to predate the investment, which I equated to the dealing, just as I stated previously; and there was nothing said about anything that related to—

Mr. CARDIN. Judge Nixon, once again, you—

Judge NIXON. That's prior to the time that the investment was made and consummated in 1981.

Mr. CARDIN. Judge Nixon, once again, you were saying nothing was ever mentioned about Wiley Fairchild's son.

Judge NIXON. Prior to the investment in 1981, prior to the investment; and the investment, it's undisputed, was made and com-

pleted at that time. I would not have invested with him is what I'm saying there. I made that deal with him.

Mr. CARDIN. If you would have thought that question referred to at any time up to the time of the investigation, would you have answered it differently?

Judge NIXON. I don't know. You're asking me now about something, if I had—something else had been asked, and I've been—I don't quite understand. I thought we were dealing with what has been asked and what has been answered.

Mr. CARDIN. Did your answer here reflect the fact that you didn't feel like you were doing any further business with Mr. Fairchild so they weren't interested in that?

Judge NIXON. I didn't say that; you did. I'm just trying to answer your question, and that's why I didn't want you to take these matters out of context, and I think the committee has to read the entire answer and read the questions and answers surrounding there to see what we're talking about. That's just a classic example of what I'm saying.

Mr. CARDIN. I have two more passages I would like to read in FBI, and then I will move on to the grand jury. On page 43, beginning halfway down, Mr. Weingarten, "Believe me, at this point, we're not suggesting that there was impropriety in the U.S. Attorney's Office, or that there was impropriety by Mr. Holmes. I mean, we have an allegation. As always in these cases a fervent hope is that there is a logical, reasonable, legitimate explanation for all these events, and we're at the inception of it, and one of the reasons we came to you is because we're not going to be scurrying around your neighborhood and not tell you about it." Judge Nixon, "Right. Well, I'm puzzled. I just don't know anything about it. I'm, I'm learning something about it now." Mr. Weingarten, "OK. So I'm just to complete the picture." Judge Nixon, "That's what I was. That's what I wanted to ask you. What allegation? I never heard, you know, never had the case, never heard about the case, except what I told you, and certainly had nothing to do with it," once again, indicating you had never heard of the case.

And, again, isn't that factually—

Judge NIXON. Well, obviously, that can't be taken to mean that. We've been talking all along about—

Mr. CARDIN. But you had heard about the case and you volunteered that you had never heard about the case.

Judge NIXON [continuing]. The fact that I'd read it in the newspaper. No, I said I didn't recollect the matter on March 11, 1983, Mr. Cardin.

Mr. CARDIN. Page 48, 47 or 48 of the FBI report, starting halfway down, Judge Nixon—

Judge NIXON. You keep referring to this as the FBI report, is this the interview?

Mr. CARDIN. Interview, excuse me.

Judge NIXON. All right.

Mr. CARDIN. Judge Nixon, "I understand, but regardless what connection I had with a Fairchild son case, isn't that the bottom line?" Mr. Weingarten, "It basically," Judge Nixon, "I mean" Mr. Weingarten, "could well be the bottom line," Judge Nixon, "Yeah, what that, what, what," Mr. Weingarten, "and that's why," Judge

Nixon, "could I have conceivably done," Mr. Weingarten, "Well, that's why I had to ask you." Judge Nixon, "to influence the case, though I certainly didn't do a thing in the world. I don't know a thing about, but what could I have done?" Mr. Weingarten, "Well, I mean, I don't know what you could have done, I mean it." Judge Nixon, "as United States district judge." Mr. Weingarten, "If somebody wanted to use their imagination, I suppose they, they could think of things, and I—that's why we asked you the question did Bud Holmes ever talk to you about the case?" Judge Nixon, "Oh, no." Mr. Weingarten, "The answer is no."

My question to you is, didn't, in fact, Bud Holmes talk to you about the case?

Mr. STEWART. Mr. Chairman, I've been pretty quiet for me, I guess, but, I mean, we're going over this over and over. The Judge has said he doesn't remember—didn't remember the conversation at the time. We'll stipulate to this, that he didn't remember the March 11 conversations and didn't mention it at these occasions. That's absolutely true. There's no dispute here.

Mr. CARDIN. Mr. Chairman, I think the record is not—

Judge NIXON. That's my testimony, and that's actually what I'm telling this committee, and, if we keep—if I keep being asked the same question, I can only give the same answer, with all due respect.

Mr. CARDIN. Mr. Chairman, if I just might point out to the committee that there is different testimony as to what he recalled when he went into the FBI interview and the grand jury as to what he knew about these conversations, he has so testified before, as I brought out before I started to testify. As it is, I am finished the FBI interview.

The CHAIRMAN. Mr. Cardin, may I ask the judge a few questions at this stage?

Mr. CARDIN. Sure.

EXAMINATION BY THE COMMITTEE

The CHAIRMAN. Judge Nixon, in reviewing the House proceedings, full proceedings before the House, you acknowledge there and you acknowledge now, do you not, that there was a conversation between you and Wiley Fairchild at Wiley Fairchild's office; is that correct?

Judge NIXON. Yes, Mr. Chairman. When I was reminded of it in February of 1985, I, then, went back and recalled that that did—that triggered it, when the telephone conversation was mentioned to me by Bud Holmes, and before that, it was such a non-event, Mr. Chairman.

The CHAIRMAN. I understand that.

Judge NIXON. It didn't amount to anything on that date, and I heard nothing more about it; and, I guess, I can't say why, but I didn't—I guess that's why I didn't recall that or associate it with the criminal investigation.

The CHAIRMAN. But you do recall that now?

Judge NIXON. Yes, I do.

The CHAIRMAN. There was a conversation—

Judge NIXON. That's correct.

The CHAIRMAN [continuing]. Between you and Wiley Fairchild in his office?

Also, before the House, and I understand listening to your testimony on direct this morning that there is also an agreement or an acknowledgement by you that on that same day, you had a conversation with Bud Holmes at his farm that included a telephone call placed by someone to Wiley Fairchild, and that you and Bud Holmes spoke to Wiley Fairchild on the telephone; is that correct?

Judge NIXON. Yes, sir.

The CHAIRMAN. In Article II of the impeachment, the House charges you with making a false and misleading statement to the grand jury, and I quote from the Articles of Impeachment, "The false and misleading statement in substance that Judge Nixon had nothing, whatsoever, officially or unofficially to do with the *Drew Fairchild* case, and that Judge Nixon," and this is your quote before the grand jury, that you said before the grand jury, and I quote, "that I never handled any part of it, never had a thing to do with it at all, never talked to anyone, State or Federal, prosecutor or judge, in any way influence anybody, with respect to the *Drew Fairchild* case." Did you make that statement before the grand jury?

Judge NIXON. Yes, Mr. Chairman, and at that time, as I told you, I did not recall the March 11 conversation, I honestly did not, not until February of 1985.

The CHAIRMAN. I understand that. Your testimony now is that you did not recall the conversation with Wiley Fairchild that you just acknowledged in his office—

Judge NIXON. I didn't—excuse me. Go ahead.

The CHAIRMAN. And you did not recall the conversations at the farm?

Judge NIXON. I didn't recall the events—

The CHAIRMAN. You didn't recall any of those conversations?

Judge NIXON [continuing]. Of that day, because they were a nothing, Mr. Chairman. They were such a short nothing in my life until all of this transpired. Now, they've been blown up; they're under a magnifying glass, and it's—the Government has tried to make them seem such a big thing; and they were not, Mr. Chairman. As I think back now and reconstruct it in retrospect, after this was brought to my attention, it was a nothing. It was apparently a misunderstanding that was cleared up, and, I guess, that's why I just—it didn't come to my mind when they were questioning me about the handling of the *Drew Fairchild* case on the Federal level and the alleged imbalanced transfer and the connection between the two as it related to me as a Federal judge, and I've alluded to that throughout here.

The CHAIRMAN. Do you—

Judge NIXON. Because, I might state—go ahead. Excuse me.

Mr. STEWART. Mr. Chairman, we do finally have a stipulation on that language you read to Judge Nixon. They were able to play it on a tape where they can hear it, and they're willing to stipulate. I can state it now or we'll pick it up later. I don't mean to interrupt you.

The CHAIRMAN. Pick it up later.

Mr. STEWART. OK.

The CHAIRMAN. Judge Nixon, I know that we, maybe me, look like—I'm not trying to prosecute this case. I'm trying to, for your sake, keep it to the Articles of Impeachment that all of us will have to decide individually, as you understand.

Judge NIXON. Yes.

The CHAIRMAN. But, also, to make sure that what you're asking us to believe that if we believed it would exonerate you, that your message is clear and your statement is clear. That is what I'm trying to do with these few questions. So let me ask you this. That statement that I just made to you, your statement that I just quoted to you, before the grand jury, that you, "never had a thing to do with the *Drew Fairchild* case at all, never talked to anyone about it, State or Federal prosecutor or judge, in any way influence anybody," you now know that statement is false, do you not?

Judge NIXON. Mr. Chairman, in my judgment—

The CHAIRMAN. Is that statement false or is it not, Judge Nixon?

Judge NIXON. It is not false for this reason, in my opinion.

The CHAIRMAN. Please.

Judge NIXON. I never did influence anybody. If I did, I didn't know it, Mr. Chairman. I don't know how clear you can come across to someone by Holmes'—taking Holmes' version, for the purpose of answering your question as correct, first of all, we talked about the blackmail, it was a passing on of a blackmail allegation. We did not talk about the case of *Drew Fairchild*, Mr. Chairman, not the way I perceive discussing a case or talking about it as a lawyer and a Federal judge. The only thing that was mentioned was blackmail.

I did not try to influence Bud Holmes, by his own admission. He stated here, by his version, that he told me he was going to do something about it, and I told him I didn't want him to do a thing, and that he went on and did it on his own. How could I be testifying falsely if I said I did not influence him.

The CHAIRMAN. Do you now—is it true, Judge—

Judge NIXON. And I wasn't involved in the case in any way. I didn't have a thing to do with it in Federal court while it was there. I had nothing to do with it to try to steer it to the State court.

The CHAIRMAN. You told the grand jury that you never talked to anyone about the case; is that true or not?

Judge NIXON. Mr. Chairman, in my judgment, that is true, because I didn't talk about the case, I talked about the—going back and looking at it now, it was the blackmail matter. But, as I told you, I did not even recall that. I didn't recall the March 11 events. It was nothing then, one little day in my life involving a few minutes that amounted to nothing, resulted in nothing, and apparently cleared up something, and I guess that's why I didn't recall it. But I did not recall it. I honestly did not. I wish I had. I wish they had asked me a question concerning blackmail, if they were looking at it from top to bottom, if they had a blackmail allegation, and quote, according to the FBI report, "involving unidentified parties that Mr. Fairchild complained about."

Well, that could have been anyone. Why didn't they ask me when they came to see me, do you know anything about the blackmail matter, just as they asked Carroll Ingram. That would have

triggered it, but they didn't, never anywhere in here. I wish they had. God, I wish they had.

The CHAIRMAN. Mr. Cardin, my suggestion, subject to counsel, both counsel, as well as my committee—we've been very indulgent. I mean, the testimony is very clear from Judge Nixon that he made the statements that he made as charged in the Articles of Impeachment because he didn't recall all of these prior discussions; isn't that correct, Judge Nixon?

Judge NIXON. Yes, Mr. Chairman.

The CHAIRMAN. If that is—

Judge NIXON. If I had—

The CHAIRMAN. Wait a minute. Wait a minute. If that is the case, pursuing this line of questioning is not going to help us compile the evidence. So what I would suggest is that we allow the panel members who may have some—I'm sure they do—ideas that I don't have, let the panel members ask some questions now, and, then, I will allow you to return to cross examination if matters are not cleared up to the satisfaction of the committee, and allow redirect.

We're here as a evidentiary panel, but if the thrust of the whole case now is simply that Judge Nixon does not recall, and that is the reason for the statements that he made for which he is accused of perjury, then we're at an impasse that I can't figure a way around. The committee will just have to make the decision, of course, having heard all of the witnesses and read all the testimony as to what are the true facts.

Mr. Danforth.

The VICE CHAIRMAN. Mr. Chairman, if we all have Article II out, I'd really like to get that language cleared up.

The CHAIRMAN. All right. This will be fine. That will be fine.

Mr. STEWART. Article II, it's on page 21 of the green thing here, and the chairman just questioned about it. In the first full paragraph the allegation is made, the false and misleading statement was in substance, when you get to the quoted part that Judge Nixon, "never handled any part of it, never had a thing to do with it at all," now, here's the key part, "and never talked to anyone, State or Federal, prosecutor or judge," and there should be the word "that" in there, "in any way influenced," past tense, "d" on the end, "anybody."

I realize that in connection with his testimony on lack of recollection that's not necessarily squarely true, but I do think it's important we have the actual testimony.

The CHAIRMAN. And you agree with that?

Mr. BARON. Mr. Chairman, I contacted a Professor Shuy, who is a linguistics professor, and who has very sophisticated listening equipment for tapes, and I went over the transcript with him and asked him particularly to focus on that passage, and that is the amendment or correction that he gave me over the phone, and we passed it on to Mr. Stewart. So I do agree with it.

Mr. STEWART. That was what we thought from our primitive equipment.

Senator REID. May we have that again, please?

The CHAIRMAN. So that everybody can make the correction in your Articles of Impeachment, we're on page 21, the first full para-

graph, and what counsel and Judge Nixon is now stipulating is that Judge Nixon testified before the grand jury in part as quote, and I'm going to make the correction, quote, Judge Nixon said, I quote, "never handled any part of it, never had a thing to do with it at all, and never talked to anyone, State or Federal, prosecutor or judge, that in any way influenced anybody." Is that correct?

Mr. STEWART. That's correct.

The CHAIRMAN. That correction is made for the record.

Mr. DANFORTH. Pardon me?

Mr. STEWART. Just if the witness could be asked if he needs a break, that's all.

The CHAIRMAN. Would you like a break, Judge Nixon?

Judge NIXON. If you don't mind, Mr. Chairman.

The CHAIRMAN. Please, we'll take a 5 or 6 minute break.

Judge NIXON. Thank you.

[Short recess.]

The CHAIRMAN. Mr. Danforth will inquire.

The VICE CHAIRMAN. Judge Nixon, like Senator Fowler, I simply want to understand the thrust of your case.

Judge NIXON. Yes, sir.

The VICE CHAIRMAN. I had thought that, perhaps, the thrust of your case would be that, yes, you did have conversations with both Wiley Fairchild and with Bud Holmes on the date in question; yes, you did remember those discussions at the time that you were interviewed by Mr. Weingarten and at the time of the grand jury; however, in your own mind, those discussions were so frivolous or minor, *de minimis* that they did not really constitute discussions of the *Drew Fairchild* case.

Now, my understanding of what you have just told us is something different than that, that what you have testified to today is that at the time of the interrogation by Mr. Weingarten and at the time of the grand jury you had no recollection of any discussion, even a *de minimis* one, about Drew Fairchild and his case with either Wiley Fairchild or with Bud Holmes.

Judge NIXON. You're correct, Senator, with the exception of the word recollection, recall at the time. I had no recall of that. I can't say that it was forgotten forever, because obviously it wasn't, because when this matter came up in February of 1985, I never denied that any of that happened. I never stated that I ever forgot it completely. I said I had no recall of it at that time, and nothing was asked of me that would trigger a recall. I wish to goodness it had been, and, secondly, where we may have misunderstood each other or you may have misunderstood me, or I may have led you, in retrospect, going back and looking at it, I still do not—I—

The VICE CHAIRMAN. I'm focusing only on—

Judge NIXON. At the time—

The VICE CHAIRMAN [continuing]. The date in question.

Judge NIXON. That's correct, Senator.

The VICE CHAIRMAN. And I'm focusing only on your state of mind at the time you were questioned by Mr. Weingarten, and, then, at the time of your appearance before the grand jury; and you're saying that at that time, you had no recall, is your word, of any discussion, even the *de minimis* discussion, with either Wiley Fairchild or with Bud Holmes about the *Drew Fairchild* case?

Judge NIXON. Absolutely, Senator, and that's what I tell you now.

The VICE CHAIRMAN. So your interview—what you said in the interview and what you said in the grand jury wasn't—there was no word game on your part, there was no equivocation, you had no reservation in your own mind of a distinction between a discussion and a passing reference, you didn't even remember the passing reference, correct?

Judge NIXON. Correct, Senator. That is absolutely correct.

The VICE CHAIRMAN. All right. Now, Judge, you testified that at the time of your interview with Mr. Weingarten, the whole interview took you by surprise, that Mr. Weingarten came in at the beginning of the interview and right off the bat he led you to believe that this wasn't just a general inquiry about a case, this was an inquiry about Judge Nixon, correct?

Judge NIXON. Correct, Mr. Chairman. In effect, that's correct, and what involvement I would have had, just as I stated to you.

The VICE CHAIRMAN. Right. And in reading the transcript, it would appear to this Senator, that it was, in fact, a discussion not of the case from A to Z, but, instead, of your financial relations with Wiley Fairchild and the disposition of the case; and that is how you took it, correct?

Judge NIXON. Yes, Mr. Chairman. I mean, yes, Mr. Vice Chairman.

The VICE CHAIRMAN. Were you worried about that discussion? Did it strike you as being something that was threatening to you?

Judge NIXON. Senator Danforth, I was upset. I was outraged. I had served on the Federal bench very honorably—and I don't, I mean, I'm not bragging, please, I don't mean it in that way—to the best of my ability, and I think you know my record if you have anything before you; and I hadn't been—I was just, I was outraged. I was shocked, and I was quite mad.

The VICE CHAIRMAN. Did you view it as an attack on your reputation and, in fact, on your professional future?

Judge NIXON. I viewed it as an attack on my name, myself, my family, and the Federal judiciary.

The VICE CHAIRMAN. And subsequent to that interview, you telephoned a number of people and you talked to various people about the interview.

Judge NIXON. Yes, sir. The three that I told Mr. Weingarten at the end of the interview that I was going to call.

The VICE CHAIRMAN. And, furthermore, after that interview, you searched your file, right?

Judge NIXON. Well, for those instruments, Senator.

The VICE CHAIRMAN. That's right, for various documents.

Judge NIXON. Yes, sir.

The VICE CHAIRMAN. And, therefore, when you appeared before the grand jury, you had various pieces of paper with you that you did not have before you during the interview.

Judge NIXON. Yes, sir.

The VICE CHAIRMAN. Now, the interview occurred on April 19, 1984, and the grand jury appearance occurred on July 18, 1984, just a day short of three months between the two. During that period of

time, is it fair to say that you not only searched your files, you searched your memory?

Judge NIXON. Trying to reconstruct some of the things that Mr. Weingarten had brought up with respect to certain matters, Senator, yes.

The VICE CHAIRMAN. Was a copy of the transcript of the interview with Mr. Weingarten furnished to you?

Judge NIXON. I was furnished a copy sometime subsequent to the interview, yes, sir.

The VICE CHAIRMAN. And sometime prior to the grand jury appearance?

Judge NIXON. I think so, Senator, I'm quite sure.

The VICE CHAIRMAN. And you knew that you were appearing before the grand jury because you were the subject of the grand jury inquiry, didn't you?

Judge NIXON. I didn't know the grand jury was going to be empaneled until shortly before it was. It wasn't a foregone conclusion. I didn't know a grand jury was going to be empaneled, Senator, until shortly before it was empaneled. I had no occasion to anticipate that it was going to go that far, because if you'll read what Mr. Weingarten said in that interview, they said they had no evidence or any information from any source that I had done anything wrong, and he said, that's the bottom line; isn't it, let's try to put this matter away. Get me those documents.

The VICE CHAIRMAN. But, Judge, you didn't put it away, did you?

Judge NIXON. Well, I tried—

The VICE CHAIRMAN. You didn't put it out of your mind, did you?

Judge NIXON. I tried to get the documents that he asked me to.

The VICE CHAIRMAN. Did you read the transcript of the interview before appearing before the grand jury?

Judge NIXON. I'm sure I did, Senator, yes. But I didn't know the grand jury was going to be empaneled until shortly before it was.

The VICE CHAIRMAN. But you did read it, right?

Judge NIXON. I think so, yes.

The VICE CHAIRMAN. And you knew that the press was commenting on this matter during this time before the appearance before the grand jury?

Judge NIXON. Absolutely.

The VICE CHAIRMAN. It was in the newspapers and on the television?

Judge NIXON. Yes.

The VICE CHAIRMAN. And as you said yourself, Judge Nixon was being tried and, I think you said, convicted in the press before you ever appeared before the grand jury?

Judge NIXON. That can be done without a grand jury being empaneled, Senator.

The VICE CHAIRMAN. That is correct. But clearly, the subject matter of the Weingarten inquiry was foremost in your mind, wasn't it, during this period of time?

Judge NIXON. Senator, no, it wasn't. I had a tremendously busy docket. I didn't know that a grand jury was going to be empaneled. I didn't know this matter was going to be pursued further. Mr. Weingarten led me to believe quite the contrary. If I may refer to any of—some of the things that he said in this interview, that's ex-

actly what he was telling me, if I got these documents together, that would probably be the end of it, and I think you've—have you had the opportunity, Senator, to read the interview?

The VICE CHAIRMAN. Yes.

Judge NIXON. And I think you'll see where he said that, or alluded to that, or insinuated that in several places.

The VICE CHAIRMAN. Judge, here is my point. For a three month period of time on a matter that was clearly of personal importance to you and about which you made several phone calls, searched your files for evidence, you had a transcript of the interview with Mr. Weingarten that you could peruse, clearly, you had plenty of time and personal motivation to reflect on exactly the questions that Mr. Weingarten asked you.

Now, Mr. Weingarten asked you questions relating to discussions. He asked you questions about whether or not you had discussed this matter with Wiley Fairchild, whether or not you had discussed this matter with Bud Holmes. He asked you those questions. Those were just read by Mr. Cardin. And you're telling us that during that three month period of time and at the time that you appeared before the grand jury, you had no recollection of your discussion with Wiley Fairchild, and no recollection of your discussion with Bud Holmes about the *Drew Fairchild* case?

Judge NIXON. Exactly what I'm telling you, Senator, and that's the truth, so help me God. I wish I had. I wish I had, because there was nothing at all to hide there. There was nothing illegal done by me. There was nothing that resulted from that. Why—I wish I had.

Senator, I might add this, if I thought that I had done anything illegal or knew that I had done something illegal, I might have—

The VICE CHAIRMAN. Judge, I'm not asking you that. I mean, the point is that when you testified before the grand jury—let's leave out the question of the interrogation—when you testified before the grand jury, you are now saying that you said that you had no prior dealings, prior discussions with Wiley Fairchild and Bud Holmes because you don't recall, you didn't at the time recall having those discussions.

Judge NIXON. I didn't recall that.

The VICE CHAIRMAN. And, yet, in fact, you had those discussions?

Judge NIXON. Yes.

The VICE CHAIRMAN. But you didn't recall them?

Judge NIXON. Yes, sir.

The VICE CHAIRMAN. Can I just ask you this one other thought that I have? Sometimes, just speaking as a politician, sometimes constituents say, hey, would you do something for us, and you say, sure, and then you do it in sort of a *pro forma* way. I mean, you really don't put out for the constituent.

Now, in this whole matter, did you have it in your mind that you wanted to ingratiate yourself with Wiley Fairchild without doing anything improper for him?

Judge NIXON. No, sir.

The VICE CHAIRMAN. So you never had it in mind even to create the impression by a phone call, by an offhand discussion with the prosecutor, not even in a *pro forma* way you never had it in your mind to sort of go through the motions, but stopping short of impropriety?

Judge NIXON. No, sir, I didn't.

The VICE CHAIRMAN. Okay.

The CHAIRMAN. Mr. Kohl.

Senator KOHL. Judge Nixon, you told Wiley, "If I can ever help you, I will, and if I can't, I'll just tell you." Do you think that is an appropriate thing for a Federal judge to be offering to help a man whose business often appears in his court?

Judge NIXON. Helping what, Senator? I didn't hear you.

Senator KOHL. Is that an appropriate thing for a Federal judge to be telling a man whose business often appears in the judge's court; to be telling a man, "If I can ever help you, I will"—I mean, isn't there an implicit edge that he may have by virtue of what he might expect or we might expect that he might have, by virtue of your telling him that?

Judge NIXON. Senator, I certainly did not mean that that way. That was a saying I said to various people, and certainly I did not intend anything improper. If I did, I certainly would not have said anything like that, I mean, if I had thought it would be taken in that context.

Senator KOHL. If you had a chance to do it over again, would you say that to Wiley Fairchild again?

Judge NIXON. Not in view of what has happened here, Senator, no, sir. I wouldn't say that to anybody again because of what has been made out of it and blown up in connection with this matter, like so many of the other things; they have been magnified and expounded and just completely blown all out of proportion.

Senator KOHL. It is obvious, but clearly you would have been better off had you either not spoken or remembered what you had said before you went to the grand jury and said what you said.

Judge NIXON. I'm sorry, I can't quite understand I don't—

Senator KOHL. Again, looking back over what has happened, the whole situation, the whole event, the whole series of events that bring you here today, not recollecting what you should have known as a lawyer precisely and being in the profession that you are in, which is the legal profession, which is based as I understand it in large part on knowing what was said and when and by whom and under what conditions, that that is your background; that is your profession; that is what you are all about in a sense. You are straining this person's credulity in asking me to understand how you would not recollect that one event that you say you don't remember.

I mean, do you understand that you are asking at least myself to really strain myself to try and understand, in as human a way as I can, how you would not recollect that event?

Judge NIXON. Senator Kohl, there is nothing I can do about that except to tell you that I am telling you the truth. I would have been foolish not to have answered questions truthfully if I could have remembered those things that I say I did not have recall on. I would have been very foolish and dumb, and I would have had no motivation for doing that, Senator. What motivation would I have had? I had none; I just didn't. And I don't know why. Now that it is all blown up and magnified, certainly you look back and say, well, you should have; but it was a nothing at that time, Senator. It amounted to nothing. Apparently—I guess that's why I didn't

recall it. It was a misunderstanding, apparently, cleared up. I never heard another word about anything in connection with that after that until Reid Weingarten came to see me in 1984, Reid Weingarten and Ken White-Spunner.

And you would have to put yourself in my place to know what a tremendous case load we had and what a tremendously busy job I had and how busy we were all the time. I told you about our business load. And I had a lot of other problems, personal problems, that I related in part here to the committee, and I did not have time to—I just didn't, I guess—I don't know how to tell you I didn't recall it but I can simply tell you that I didn't, because it was a nothing, Senator. God, I wish I could remember. I wish the question had been asked of me. Why they didn't ask me something about a blackmail allegation that would have triggered it; I don't know if they were looking at it from that respect.

Senator KOHL. Thank you.

The CHAIRMAN. Mr. Chafee.

Senator CHAFEE. Judge Nixon, in the FBI interview, you recalled your first meeting with Bud Holmes. You volunteered this, about he was trying a case, and he was trying to get it settled. And you said, "Well, Bud, just go tell them I'm going to help you with the case," and he did, and they got it settled.

Did you have any intention of helping with the case, or was that—

Judge NIXON. Yes, I would have associated with him and helped him try it, as I did several young lawyers who were just starting out—and didn't take any part of the fee.

Senator CHAFEE. You were introduced by Mr. Stewart here when we started this hearing last Wednesday, I believe, as one of the co-counsel—you were appearing *pro se* to some extent—is that correct?

Judge NIXON. I'm sorry, Senator?

Senator CHAFEE. Mr. Stewart, when he introduced counsel here, I think indicated that you were part of the co-counsel. Am I correct or incorrect?

Judge NIXON. No, sir.

Senator CHAFEE. You are not having any part—but this is a pretty important matter for you.

Judge NIXON. No, sir. Anybody who has a—

Senator CHAFEE. Who has himself as a lawyer has a fool as a client—

Judge NIXON. Yes, sir.

Senator CHAFEE. Yes, we know that. But I thought that's the way I understood it. But anyway, you followed this case fairly closely, I assume.

Judge NIXON. Yes, sir.

Senator CHAFEE. And it is important to you, and that is an understatement.

Judge NIXON. Yes, sir.

Senator CHAFEE. And as we have had plenty of testimony, you are a very experienced lawyer and judge. Yet you said you had never seen that stipulation before, that stipulation 71. Do you stand by that statement?

Judge NIXON. I stand by it, but I also state to you that I adopt it—when my attorney enters into any stipulations, I am charged with them, and I am not saying Mr. Stewart has done anything improper or without my authorization, or condemning him in any way.

Senator CHAFEE. No, sir, no.

Judge NIXON. I am just stating a fact that I didn't see that stipulation before. I told Mr.—

Mr. STEWART. Senator, if it helps, I'm pretty sure I never did send it to him. It was done between counsel. And if I did something wrong, I apologize in front of everyone.

Senator CHAFEE. No. I just wanted to say I was astonished that in a matter of this import—

Mr. STEWART. Well, I've been busy, too.

Senator CHAFEE [continuing]. Of this great import that somebody who is as deeply involved as Judge Nixon is in this case—

Your answer to Senator Danforth was important to me because this very matter, this very line of questioning that he had, had occurred to me likewise—namely, that you had appeared before the FBI, and you gave flat statements about not remembering—not having any conversation, never mind remembering—not having had any conversations regarding the *Drew Fairchild* case. Then three months went by. And obviously, this is again a matter of great import to you; as you testified, you had been tried and convicted in the press, and one of the newspapers had even run an editorial saying you ought to, I think you indicated, resign from the bench—is that correct?

Judge NIXON. Yes, as I recall, that's what it said.

Senator CHAFEE. And with this on your mind, your answer to Senator Danforth is that there is no reason to recall what took place in the conversations with either Bud Holmes or Wiley Fairchild.

Judge NIXON. Senator, I said I did not recall at the time. I was focused in by Reid Weingarten on what I was charged with, what I was being investigated for, and I have stated what those three things were.

Senator CHAFEE. And so then, before the grand jury, on page 324—or page 50, as it is labelled in some of the numberings—and on page 350, "Did Wiley Fairchild ever discuss the case with you?"

"No, not to the best of my recollection. I think I would recall if he had, believe me, but I don't recall that he ever did."

"Did Wiley Fairchild ever ask you to do anything vis-a-vis his son's case?"

"Absolutely not."

"Did anyone in behalf of Wiley Fairchild ever ask you to do anything in behalf of his son's case?"

"Emphatically not."

Now, your point is that you just, plain did not remember those conversations.

Judge NIXON. Senator, I didn't remember that. But taking it right now in context and looking at it, he did not, and stated himself that he did not, ask me to do anything about his son's case.

Senator CHAFEE. Well, now you are arguing the meaning of it rather than the memory of it.

Judge NIXON. Well, I have to answer that way in view of your question, Senator. I think, with all due respect, I don't know how to answer it otherwise.

Senator CHAFEE. The same goes for page 76 or 350 in one of the transcripts: "I have never talked about anybody about the case, any Federal judge, State prosecutor, Federal prosecutor, State prosecutor," and so forth?

Judge NIXON. Yes, sir.

Senator CHAFEE. Now, then you related in your direct that Bud Holmes came to your courthouse where you were sitting, and the jury was out, he said he wanted to see you—called you, I guess—and so you went down to meet him.

Judge NIXON. Yes, sir.

Senator CHAFEE. And that is the first time that your memory was jogged as to the conversations you had had with Bud Holmes, the phone call from the Holmes farm, and so forth.

Judge NIXON. That's the first time it was jogged, because that's the first time that anyone had asked anything or brought up anything about a phone call.

Senator CHAFEE. Anything about your discussing or being involved in any way with the *Drew Fairchild* case; is that correct—the first time you remembered that, "Yes, I did have some discussions with it."

Judge NIXON. With respect to that March 11th incident, 1983.

Senator CHAFEE. Is that the date of the courthouse—

Judge NIXON. No, sir. That's the date of the phone call. February of 1985 I think was the date.

Senator CHAFEE. Now, it must have struck you like a blow, didn't it—did you recall what you told the grand jury? Did you put two and two together, in other words, say, "Say, I flatly denied this to the grand jury"?

Judge NIXON. I was never asked about a phone call before the grand jury.

Senator CHAFEE. No, but the whole business about the discussion of the—have you ever discussed the *Drew Fairchild* case, had any conversations about it, and so forth, all of which you flatly denied before the grand jury, then Bud Holmes comes to you at the courthouse, and you meet, and the telephone call with Wiley Fairchild is brought up—and then you remembered it; am I correct?

Judge NIXON. Yes, sir. I started remembering, yes.

Senator CHAFEE. And did it cross your mind that, "Hey, I told the grand jury I didn't know anything about all this"?

Judge NIXON. Well, Senator, if anyone had wanted to ask me any questions about it, I could have easily been asked to come back before the grand jury or subpoenaed, and I wasn't.

Senator CHAFEE. But I mean, you were very explicit before the grand jury—there is no and, if, or buts—and your explanation was you did not remember it.

Judge NIXON. I discussed with my attorney at that time, Mr. Goodman, about what Bud Holmes had said to me on that evening of February of 1985, and I believe he talked to Mr. Holmes' attorney and told him that I recalled the phone call that Bud Holmes had asked me about, and if asked about it I was going to tell about it, that it occurred, and Mr. Goodman and I talked about possibly I

would be called back before the grand jury, and I was certainly willing to be called back. And we talked about going back before the grand jury, and after our discussion, we discussed it and determined that I truly was the target at that time, the target of this investigation, the ultimate target, despite the fact that it had been denied before.

Senator CHAFEE. So you talked over with Mr. Goodman, your attorney, the change in the situation—that is, the change from your prior testimony?

Judge NIXON. No, sir. We talked about the phone call incident. We did not go into that other matter at all.

Senator CHAFEE. And did it occur to you that maybe you'd better let the authorities know, whoever they might be, that this is quite different from what you testified to?

Judge NIXON. I knew I had testified honestly before the grand jury, and I had not knowingly told the grand jury anything false with intent to deceive anyone or intent to lie to the grand jury. I had never knowingly told the grand jury a falsehood because of what I told you, I did not recall the March 11th, so—

Senator CHAFEE. All right. Let's accept that. But then, based on the visit of Bud Holmes out in your parking lot there, you suddenly remembered the situation and the phone call—and maybe you even recalled the conversation with Mr. Fairchild or the telephone call with Carroll Ingram—I don't know how much you did recall, but certainly you remembered the call from the farm—and you realized that if you went back before a grand jury again, you would change your testimony—I mean, you would indicate complete recall, or the recall; is that correct?

Judge NIXON. Yes, sir.

The CHAIRMAN. Excuse me, Judge Nixon. Yes, Mr. Edwards?

Mr. EDWARDS. Mr. Chairman, there will be in the next hour about three votes—we have been called for the first vote now—in the House of Representatives. The managers on the part of the House have no objection for this cross examination to continue—our senior staff will remain here—although we would like to be confident that tomorrow—you have some more questions, Mr. Cardin—and perhaps a summary.

The CHAIRMAN. Well, I thank you for that, with your counsel being here, and we will—

Mr. EDWARDS. We probably won't be able to return today—is that all right, Mr. Chairman—if you are talking about 6:00.

The CHAIRMAN. That's right. We are going to finish here by 5:30 and hope to conclude the panel's questions of Judge Nixon, and then tomorrow at 9:30, we'll meet again, and if further cross examination and redirect is necessary, then I will consider that at that time.

Mr. EDWARDS. Thank you, Mr. Chairman.

The CHAIRMAN. We will have closing arguments in the morning and will try to conclude the whole case by lunchtime tomorrow.

Senator CHAFEE. I've just got a couple more questions if I might, Mr. Chairman.

The CHAIRMAN. Yes.

Senator CHAFEE. You testified that when you were out at Bud Holmes' farm he said, "Well, I'll tell you about the case," and you

said, "No, I don't want to hear about it"—your explanation being why you didn't want to hear about it because it takes Bud Holmes five hours to tell something that the normal person would take an hour or less to tell. That was your reason not—

Judge NIXON. Yes, sir, because there was nothing wrong with him telling me about it if I wanted to listen to it.

Senator CHAFEE. Mr. Chairman, will the counsel stipulate to those telephone calls, the records on May 12th—May 14th? I wasn't quite sure what calls were made from where. I think there was one made—as I understand it, the telephone bill shows one made from Carroll Ingram's office to Judge Nixon's home in Hattiesburg, across the river from Hattiesburg, that's one call, charged to chambers, and another call made from Bud Holmes' house—

Mr. STEWART. Office.

Senator CHAFEE [continuing]. Bud Holmes' office at around 5:30 to, again, Judge Holmes' house—

Mr. STEWART. To Judge Nixon's house.

Senator CHAFEE [continuing]. I mean Judge Nixon's house—and charged to—okay, fine, thank you.

Mr. STEWART. They appear to be regular business records, yes, sir.

Senator CHAFEE. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Wirth.

Senator WIRTH. Thank you very much, Mr. Chairman.

Judge Nixon, what is the importance in the discrepancy in the date of your visit to Bud Holmes' farm? You suggest, I understand, that it occurred in 1983, and Bud Holmes says that it occurred in May 1982.

Judge NIXON. Well, apparently, the significance that was attached to it, Senator, is in connection with the passing of the *Drew Fairchild* case to the files, that it was put on the inactive docket. Otherwise—

Senator WIRTH. What difference does it make if it occurred in May 1982 or March 1983?

Judge NIXON. Well, it would make a difference with respect to Bud Holmes' credibility.

Senator WIRTH. Can you explain that a little bit more?

Judge NIXON. Yes, sir, because he said at one time that one of the motivating factors for his passing it to the files in December, almost Christmastime, 1982, some seven months later, was the fact of what occurred that night.

Senator WIRTH. That you had talked to him—

Judge NIXON. Although he had previously stated and subsequently stated that Bill Porter's putting the pressure on him to get that done before the new judge came in was the principal motivating factor.

Senator WIRTH. And so what he is saying is that he did it after his—just to make sure that I understand this—that he did it after his conversation with you at the farm and that that conversation existed in May 1982?

Judge NIXON. Yes, sir. He said he did it seven months later.

Senator WIRTH. Now, you said you weren't in Hattiesburg in May 1982.

Judge NIXON. I had said that at trial and discovered that was in error, and I was in Hattiesburg on May 14, 1982.

Senator WIRTH. How often did you go to Hattiesburg?

Judge NIXON. It varied, Senator. I would hold court there at various times; I'd be passing through. If I had dental appointments with the two dentists—I had an oral surgeon and a periodontal surgeon there that I went to—and many times, you—Hattiesburg is what is called the “hub city”, and in order to get to—normally, the best route, by far the best route, to get to Jackson or Vicksburg or Meridian, I'd have to travel through Hattiesburg from my home in Biloxi.

Senator WIRTH. Hattiesburg is kind of the center of your district, is that right, and you'd have to go through Hattiesburg?

Judge NIXON. Yes, sir. They called it the “hub city”—not because of my travelling through there, but because a lot of railroad tracks ran through there for years; it is sort of the hub of the Mississippi.

Senator WIRTH. So you'd go through Hattiesburg a lot, a great number of times—

Judge NIXON. Yes, sir.

Senator WIRTH [continuing]. 20 times a year, 30 times a year?

Judge NIXON. It was at least that at that time, Senator, yes, I would say so.

Senator WIRTH. And you were having major dental problems in 1982; is that correct?

Judge NIXON. I was having dental problems, yes, around that time.

Senator WIRTH. How often did you go to the dentist in Hattiesburg?

Judge NIXON. I don't recall how many, but I went to a periodontal surgeon and to the oral surgeon.

Senator WIRTH. Do you mean once, or ten times, or—I'm just trying to get a sense. The reason I am asking is I'm just trying to get a sense of is it important or not that you got confused about this date, which appears to be important, or at least I get the impression that it is.

Judge NIXON. Well, I'd say probably between five and ten times, anyway. And as I stated in my trial testimony, when I thought I wasn't there, I said the only reason I would have—since I did not have any business there—the only reason I would have possibly gone there was because of medical or dental appointment. And it turned out I did have a dental appointment there, but the Government had the files, all the records on that at that time, and hadn't delivered it to us as required by the law of the court.

Senator WIRTH. And we also have further data from the earlier discussion with Mr. Cardin that you had been in Ingram's office and you had been in Holmes' office.

Judge NIXON. Apparently so. That's what the phone records show, and I won't dispute it; I don't recall.

Senator WIRTH. Did you often go to Ingram's office and go to Holmes' office?

Judge NIXON. I went to Carroll's office quite a few times, not—I wouldn't say a great number of times, but I was in Carroll's office several times.

Senator WIRTH. And in Holmes' office as well?

Judge NIXON. Yes.

Senator WIRTH. I mean, you would go by there——

Judge NIXON. Yes.

Senator WIRTH [continuing]. And you would generally have—this is a pretty full afternoon, it would appear, that you saw Mr. Fairchild, and then you visited Mr. Ingram, and you visited Mr. Holmes, and then you went from Holmes to Fairchild; is that right?

Judge NIXON. Well, if I had gone to Fairchild's on that date, which I did not do——

Senator WIRTH. Or you had the conversation with Fairchild on that date.

Judge NIXON. No, sir. March 11, 1983, is when all that took place, and also the phone call—not May 14, 1982. Now, I don't know what I did on May 14, 1982 because I didn't remember being in Hattiesburg. But I was there, no question about it. And when we got the dental records that the Government finally produced at the motion for new trial, we found out I was there. But they had them all the way, and the reason we did not inquire of Dr. York, who was the oral surgeon, whose records they had, was because we thought the Government would have provided them to us if they had reflected anything with respect to my being in Hattiesburg on that date, but they didn't produce them. And Dr. York had told my wife prior to that time, prior to the trial, when she was up there with her mother for a dental appointment that the Government had taken all of his records which pertained to me, subpoenaed them for the grand jury, and had them all.

So there was no way to check with him to determine whether I had been in his office that day. Only the Government knew that, and they didn't disclose it.

Senator WIRTH. I am not a lawyer, but when the Government subpoenas records, do they leave a xerox copy there so that in case the Government loses the records, somebody has a copy?

Judge NIXON. That's not the way Barbara, my wife, understood it. She thought when Dr. York told her they got all my records, that they had the records, so we assumed that they did. I don't know whether they leave xerox copies or not, honestly. I doubt that they did, but I don't know.

Senator WIRTH. And it wasn't important to find out why the Government would have taken those records or, on an issue that is this important to you, why the Government would have taken those records, what dates they might be looking for, if there was some question about your being in Hattiesburg?

Judge NIXON. No, sir, not until they produced them later.

Senator WIRTH. You didn't have any question why would the Government come and get your dental records?

Judge NIXON. Well, I think they were trying to allege something with respect to Dr. York, who was a good friend of mine, whom I hunted with often and socialized with, and we stayed in each other's homes, as to whether he had charged me for dental appointments or something.

They investigated me from A to Z, every aspect of my life, and that was part of it. They used the grand jury to do it—from the time I practiced law on up to the present; friends I hunted with,

friends I did business with, friends—anybody—their homes on Sundays, visited them, FBI agents did, on Sunday nights. It was a terrible ordeal.

Senator WIRTH. I can understand. Let me jump to your FBI discussion, if I might briefly. After you talked to Mr. Weingarten, you said you were going to call three people. And I want to focus now on that three-month gap between the FBI and the grand jury.

Judge NIXON. Yes, sir.

Senator WIRTH. You said you told Mr. Weingarten you were going to call three people.

Judge NIXON. Yes, sir.

Senator WIRTH. So you called Mr. Holmes?

Judge NIXON. Yes, sir.

Senator WIRTH. And what did you ask Mr. Holmes?

Judge NIXON. I asked him, I said, "Bud, do you know anything about this investigation that is going on? I had a member of the Public Integrity Division of the Justice Department and an FBI agent down here in my office talking to me and asking me questions about this *Drew Fairchild* case, which apparently you took from George Phillips or somehow was steered from Federal court to State court." And, "What do you know about this matter? Why are they investigating me? You know I had nothing to do with that"—or words to that effect.

And his reply was, "Well, if that S.O.B. from Washington"—"if he is butting into my business, he'd better get on back to Washington. If he wants to run the district attorney's office, he can come down here and be elected. I don't know a thing about it."

Senator WIRTH. And in that discussion, you have been talking to the FBI, you call Mr. Holmes, and there is no point at that time that Mr. Holmes suggest to you that, "You remember we talked about this out at my farm"?

Judge NIXON. Absolutely not.

Senator WIRTH. No recollection at all that the two of you had driven—Holmes didn't say, "You remember we drove out there"? Holmes has told us, I gather, that he drove out to his farm with you and talked about the issue with you. He didn't raise it with you at that point?

Judge NIXON. No, he didn't, Senator.

Perhaps the reason he didn't was because they were investigating the failure to prosecute in Federal court and the steering of the case to him; and nothing like that was ever mentioned in that conversation. This was in 1983 when the conversation at the farm took place, and apparently all this other happened in 1980—or 1981, rather—between August of 1980 and 1981, when the case just lay dormant in the Federal system without even a presentation of an indictment, and then wound up in State court for indictment. I found all that out later, of course.

Senator WIRTH. Do you remember or have any sense of how long you talked to Mr. Holmes after your discussion with Mr. Weingarten?

Judge NIXON. No, sir, but it wasn't long. I wanted to talk to him and to Carroll Ingram and to George Phillips, the United States Attorney.

Senator WIRTH. And Holmes said, "I don't know anything about this; I don't know what's going on"?

Judge NIXON. Yes, sir. That's correct, Senator.

Senator WIRTH. And you said to him, "I'm not involved in any way, shape or form in that discussion," and he didn't disagree with you.

Judge NIXON. No. And I can't understand why he would testify that he thought it was some kind of judicial performance inquiry or something. I told him exactly what it was. He knew what it was because he stated that he ought to get back to Washington and not meddle in my business—if he wants to be district attorney down here, let him come down and be elected.

Senator WIRTH. Let me ask one other brief question if I might, Mr. Chairman. On your reporting of the investment that you made with Fairchild, has there ever been any suggestion that you did not fully report your investment?

Judge NIXON. I don't know, Senator, what the suggestion was, but I will say this to you. Weingarten tried to intimate or did intimate that the transaction was supposedly purposely backdated before the drug bust in August or whenever that was in 1980 to cover up something, and they found out that that was not the case at all right from the beginning, and they couldn't understand why didn't I report that on my financial—if that was true, why didn't he report it on his financial disclosure statement for 1980 which was due to be filed on May 15, 1981.

Senator WIRTH. So that was the issue on reporting was not the fact that you didn't report it, but that they said because it was backdated, then it had occurred earlier, so you should have reported it the previous year. Is that the issue on the reporting?

Judge NIXON. No. They said they couldn't understand—they were very much disappointed that I didn't report it as a 1980 transaction. That would have conformed with their theory that we were trying to show it as backdated. I reported it as a 1981 transaction when the instruments were signed and the matter became formalized and effective. And that blew their minds, I might state, because they couldn't—that blew their theory sky-high about any surreptitious backdating to try to show it was a 1980 transaction when I reported it—and I could have easily reported it as a 1980 transaction because the report for 1980 wasn't due until May 15, 1981, and the deeds had already been executed and recorded; and I reported it as a 1981 transaction, which was after the drug bust we find out now, and they couldn't understand—that blew their case or their theory sky-high.

Senator WIRTH. Thank you, Mr. Chairman.

The Chairman. Mr. Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman.

Judge Nixon, I'd like to go back for a moment to your testimony before the grand jury and your state of mind. You indicated that you had a busy docket, but nevertheless approximately what, three months previous or thereabouts, you had had an opportunity to have extensive questioning from Weingarten. And when you made the blanket statement that you had never talked to anyone, was that in anger, and was much thought given to that, or in the manner it was presented, was it just a casual question or was it

made with some significance in the manner in which it was asked of you and your response?

Judge NIXON. Senator, I was upset and angry during that time, if that answers your question. I don't know. It is hard to go back and—

Senator MURKOWSKI. Well, let me ask this question. Before you went to the grand jury, did you have an opportunity with your counsel to review in detail all the facts that were relevant to Weingarten's meeting with you that you knew would be asked again or reinforced from the standpoint of the prosecution?

Judge NIXON. Well, as I stated, it wasn't too long before the grand jury was empaneled that we even knew it was being empaneled and got the word—

Senator MURKOWSKI. How long was it? You say "not too long"—

Judge NIXON. I don't know. I'd hate to tell you one thing and it not be true, but it wasn't very long.

Senator MURKOWSKI. I'd ask, Mr. Chairman, for the record to have the time sequence between notification when Judge Nixon was advised that the grand jury was going to be convened.

Judge NIXON. Senator, they never advised me of that. I was never asked to come before the grand jury. I was—

Senator MURKOWSKI. What notice did you have?

Judge NIXON. I either read it in the paper, or someone told me that a grand jury was being empaneled, shortly before.

Senator MURKOWSKI. So recollection—do you recall how much notice you had?

Judge NIXON. I wish I could recall. I would merely be guessing if I told you, but it wasn't long. And I don't want to make a misstatement to you.

Senator MURKOWSKI. Well, to follow the line of questioning that Senator Chafee brought out, it occurred to me that since you had this conversation with Mr. Holmes in the parking lot and it triggered your recollection that indeed that was of some significance, being a lawyer and a long-time judge, the fact that there was an inconsistency in your testimony before the grand jury and previously with Mr. Weingarten concerning your recollection of facts.

In retrospect, would it have been hindsight to suggest that you should have volunteered to go before the grand jury, ask that the grand jury be reconvened or convened, so that you could explain this significant event that you were able to recall because, you know, as we reflect on the merits of the testimony we have, there is a grave inconsistency here on what you now recall and what you stated to the grand jury and what you stated to Mr. Weingarten.

My question, sir, is why didn't you seek out rather than simply wait for the grand jury to ask you the question again—why didn't you seek out to clarify the record?

Judge NIXON. Well, Mr. Goodman and I discussed briefly the question of that very matter that you are talking about, but not for the exact reason you did, but to go and tell them about the phone call, which I had never been asked about, which we still didn't think was of any great moment because there was nothing illegal done in connection with the phone call. Nothing was ever charged

as a result of the phone call being made, no criminal charges or anything else. It was not an illegal matter at all.

And we figured if the grand jury would want me back, or the prosecutors, all they had to do was ask me. They didn't even have to subpoena me. But by that time, Mr. Goodman and I concluded, based on other things that were happening, that I was truly the ultimate target, or "big prize" as Jarvis referred to me in his letter to the FBI—

Senator MURKOWSKI. Well, sir—

Judge NIXON [continuing]. And if I hadn't gone before the grand jury voluntarily, or asked to go before them the first time, we wouldn't be here today because there was nothing, nothing, ever came of the charge that they were investigating, the core or the focus of this whole thing, the charge which gave rise to everything—the gratuity charge. I was found not guilty of that, and the prosecutor a year later—I think it is in evidence here—in a statement made at the University of Mississippi Law School stated he could not fault the jury for finding me not guilty of the gratuity charge because it had not been proved.

Senator MURKOWSKI. Let me turn the question around, Judge—

Judge NIXON. And so I was found guilty of lying about something that I was innocent of, to cover up my innocence in effect.

Senator MURKOWSKI. The question of gratuity is not at issue here in the findings, but given your version of the facts, why do you think the jury convicted you of perjury?

Judge NIXON. I think the case was so tainted by this gratuity allegation that they proceed on the corruption charge, that they proceed with, knowing they never had a case to begin with; plus the fact that I think it brought about a compromise verdict; plus the fact that a Federal judge is not the most popular person in the State of Mississippi with what we have to do.

Senator MURKOWSKI. To go back to the conversation that you—

Judge NIXON. That's my opinion, sir.

Senator MURKOWSKI [continuing]. Thank you—you and Mr. Goodman had concerning your recollection being triggered by Mr. Holmes and the conversation in the parking lot, in retrospect do you think that was good advice that you both agreed upon, that there would be this void in the record, namely, your testimony to the grand jury as well as your statement to Mr. Weingarten and the fact that repeatedly you are asked what recollection you have had, and previously you said you didn't have any, and now, of course, you recall.

Judge NIXON. Senator, we were of the opinion then that I was going to be indicted on anything they could possibly indict me on, and they did go ahead also and indict me on the gratuity charge knowing they never had a case on that.

So I don't think anything would have mattered, if I had gone back and done anything. Reid Weingarten was going to have me indicted. He had just unsuccessfully prosecuted Judge Hastings and lost the case. He came down bragging to me about how he had convicted Congressman Hansen in our first interview, and I was targeted. I was going to be indicted come hell or high water.

Senator MURKOWSKI. Well, my last question is relevant again to the fact that you have been convicted of perjury, and that conviction or charge is what we are addressing here and the relevance to your lack of recollection on two occasions and then recollection after being advised by Bud Holmes of the conversation at the farm may well led to that conclusion.

Now, your answer to that, I believe, to me was in general terms that you were going to be convicted anyway, or of something, so therefore it is not relevant. But I think it is relevant to this Senate body.

Judge NIXON. I didn't say that, Senator, and I didn't mean to say it. I said I was going to be indicted. I had not been even indicted at that time.

Senator MURKOWSKI. But you were convicted of perjury.

Judge NIXON. Subsequently, yes, sir.

Senator MURKOWSKI. And you do not feel that this lack of memory relative to what happened at the farm entered into that?

Judge NIXON. Senator, I don't know. Who knows what a jury thinks, especially when the case is so tainted with a corruption charge of bribery or gratuity, and most of the trial concerned that. Most of the trial concerned all of these other matters with respect to the alleged gratuity violation, which I was not only acquitted of, but the prosecutor admitted that he had not proved and did not have a case on.

Senator MURKOWSKI. Well, it would seem to this Senator that had you voluntarily gone back to the grand jury and indicated your willingness to testify as a consequence of your recollection after being jarred by Mr. Holmes, that this particular point of issue would not concern this Senator.

Judge NIXON. I appreciate your opinion, Senator, but if you were down in Mississippi and going through and saw what we saw was happening at that time and the atmosphere that surrounded that courthouse at the grand jury session—it looked like Gestapo headquarters or KGB headquarters. It was the worst feeling in the world to see the courthouse turned into what almost looked like an armed camp, and it was a terrible ordeal that we were going through, and it has been for five and one-half years.

With all due respect, it is easier—I don't say it is easier—but your perspective of it from here is certainly not the perspective you would have gotten if you had been there. I can say that to you in all honesty.

Senator MURKOWSKI. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Reid.

Senator REID. Thank you, Mr. Chairman.

From all that I have been able to gather here, the prosecutor acknowledged during the closing argument to the jury that he had no case regarding the gratuity or bribery charge. Is that true?

Judge NIXON. Senator, he wasn't quite that strong. He said the two tracks that they were trying to show crossed didn't come together. But the trial judge would not grant a motion for a verdict of acquittal. He let all charges go to the jury.

Senator REID. And it wasn't until he gave a speech at the University of Mississippi that he acknowledged you really did the right thing.

Judge NIXON. Yes, sir.

Senator REID. OK.

Judge NIXON. Although I think he told two newspaper reporters, Fred Strasser of the *National Law Journal*, and—I forget the name of the other reporter, who was with the *Jackson Clarion-Ledger*—during the trial that he didn't think he had a case on the gratuity, or wasn't going to be able to prove it, or words to that effect. But he continued with it.

Senator REID. The evidence is——

Senator SYMMS. Excuse me. Are you talking about Weingarten?

Judge NIXON. Yes, sir.

Senator SYMMS. Thank you.

Senator REID. The evidence is clear——

Judge NIXON. Excuse me. That article is in the record, I am sure, as an exhibit, and he gave the speech at the University of Mississippi about a year later. It was written by a reporter named Jerry Mitchell, of the *Jackson Clarion-Ledger*, quoting Weingarten, and saying what a chilling effect my conviction was going to have on anybody voluntarily going before a grand jury.

Senator REID. The evidence is clear that there are no allegations or insinuations that you did anything by virtue of your judicial office to assist Wiley Fairchild in anything; is that fair?

Judge NIXON. Yes, Senator.

Senator REID. And that according to Bud Holmes, that you didn't ask him to do anything to help Fairchild's son?

Judge NIXON. Even stronger than that, Senator—he emphasized here that when he said he was going to do something, I told him I didn't want him to do anything and that he went ahead and did it on his own, anyway, later.

Senator REID. I guess the problem I'm having with this is let's assume that before the grand jury—for purposes of my discussion with you, let's assume before the grand jury that you didn't tell the truth on an issue relating to Drew Fairchild—OK?

Judge NIXON. Yes, sir.

Senator REID. Now—and I tried to bring this out this morning in some of my questions—how did you do anything to help anybody in this case?

Judge NIXON. I didn't, Senator; I did not. And also, I'll say this to you since you asked that question—I knew as a Federal judge and as a fairly good country lawyer that in order to be guilty of violating the bribery or gratuity statute, it would have to involve some official conduct on my part as a Federal judge in addition to Weingarten telling me that's what he was investigating. And certainly none of that in any way involved any official conduct of any kind by me as a Federal judge, none of these charges here, because of the separate systems, State and Federal. The only thing that could have involved me in an official capacity as a Federal judge was if I had done something to prevent the prosecution in Federal court of steering the case out of Federal court to State court. And there is no evidence that anything like that was ever done, and it never was, and I have never been charged with anything like that.

Senator REID. Once we establish that conversations took place between you and Fairchild and Holmes, there really doesn't appear

to be much of a dispute as to what was said among the parties; would you agree to that?

Judge NIXON. Well, in certain respects, Senator. Holmes said I asked him what he said, and Fairchild and I both said the only conversations related to the blackmail; Fairchild's and my conversation related to the blackmail and exactly what I said.

Senator REID. The foundation I am laying here, though—you can take whatever version of the testimony that you want and, assuming that version to be correct, under any version, you didn't do anything that was illegal, did you?

Judge NIXON. No, sir, I did not, and I am not charged with that.

Senator REID. You are being charged, you have been convicted, and you have served time in prison for lying about something that had no bearing on anything.

Judge NIXON. Yes, sir, that's exactly right.

Senator REID. How close is the office of Ingram and Holmes in the city of Hattiesburg, Mississippi?

Judge NIXON. A few blocks away. I hesitate to say in miles, but I'm sure it's not more than a mile, quite sure.

Senator REID. At the time of the grand jury investigation, did anybody ever ask you about the *Drew Fairchild* case being passed to the file, and what influence you may have had on that action?

Judge NIXON. No, sir.

Senator REID. One of the impeachment articles states—it is III1(C)—that during the interview with Federal agents, you stated that you didn't even know Wiley Fairchild had a son, and during the grand jury investigation you state—and I quote—"didn't even know Mr. Fairchild had a son when I was dealing with him in the business transaction."

Do you recall having said that, and is that a true statement?

Judge NIXON. The answer to both of those questions is yes, Senator.

Senator REID. I have no further questions.

The CHAIRMAN. Senator Jeffords.

Senator JEFFORDS. Thank you, Mr. Chairman.

Judge, I don't think any of us like being here, and I know you certainly don't, and we are all troubled, though, by the fact that you are here and what circumstances led up to it.

I am trying to review some of the facts that trouble me. First of all, it is clear that Wiley Fairchild thought he had a deal in giving you an illegal gratuity, or was expecting something from the deal that you made—it seems pretty clear to me, anyway. His lawyers said that he was "guilty as hell", the deal was very favorable, and he pled guilty to it and was sentenced—

Judge NIXON. Senator, may I ask that question, if that's a question of me?

Senator JEFFORDS. Yes, well, I'll let you comment on it, yes.

Judge NIXON. All right, sir. In the trial of this case when Wiley Fairchild testified for the prosecution, if you will read his trial transcript, he said he was not guilty of any gratuity. The only reason he pled guilty to it, his lawyers told him if he didn't, they were coming to get him in handcuffs and taking him to jail. That's right in the transcript of the trial.

Senator JEFFORDS. OK. Well, we can each take a look at the facts and come to our own conclusion——

Judge NIXON. All right, sir.

Senator JEFFORDS [continuing]. But certainly, if you take a look at the circumstantial evidence around that, certainly that you had some original discussions in, I think, late 1979 or early 1980, and then there was a drug bust in 1984, and then there was a very excellent deal offered to you in February or whenever it was of 1981 wherein you were going to get interest in a well, and he was going to essentially not charge you; you signed notes, you had interest rate well below the going rate at that time—certainly, that was a very favorable deal, and apparently they knew it was a pretty good likelihood there would be royalties paid—is that correct?

Judge NIXON. No, sir. Senator, the drug bust was in 1980, not 1984. You had said 1984.

Senator JEFFORDS. Nineteen eighty, that's correct. Before—I said 1980 before.

Judge NIXON. I'm sorry. Excuse me. I misunderstood you.

Senator JEFFORDS. Before the deal.

Judge NIXON. Senator, we negotiated on the agreement, and it was agreed to in the first part of 1980. The drug bust took place as I understand it in August of 1980——

Senator JEFFORDS. That's correct.

Judge NIXON [continuing]. Several months later. When I invested with Mr. Fairchild, I didn't know how it was going to turn out, of course not. One well didn't turn out well, and the other two did.

Senator JEFFORDS. OK. That's your understanding. To me, it certainly looks like you got a good investment, and I would agree with the jury that they shouldn't have found you guilty, for the fact that he may have thought he had given you something in return for some expectations does not make you guilty. I understand that, and I don't disagree with that.

But what I am getting to is that at some later time you became aware of the fact that Drew Fairchild and Wiley Fairchild were in trouble with the law, or at least that Drew was, and that at that time, certainly, your oil deal was a good one. And certainly it seems to me that I would be deeply concerned about that arrangement, and I would be very wary of anything to do with Wiley Fairchild or Drew Fairchild, at least from that point on. And it is very difficult for me to conceive that your testimony—and this is why I would like your comments—it seems to me that at that point, you had three options. One is you could fully disclose every dealing you have had and even to go to the extent perhaps of donating the deal to charity or whatever; or you could cover it up for whatever reason, financial pressures or the fact that you owed a favor, or future investments or whatever—that's another option, or one possible explanation—and the third one is the one you want us to believe, that you kind of considered it as a non-event and just did not recollect or have any suspicion that there might be a sense of impropriety or perception of impropriety to your dealing and the circumstances that surrounded it.

And it is hard for me to believe that, especially in that three-month period after it started, that you really did not recollect anything.

I'd just like you to comment on those things. That is what is troubling me.

Judge NIXON. Senator, I don't know that I can—comment on what aspect. That is a hard question for me to know exactly that you want me to comment on. If you could be a little more specific, please, so I—I'm not trying to give you a hard time, but I don't quite understand exactly what you want me to comment on.

Senator JEFFORDS. Well, you want us to believe that you didn't have any concerns raised or you didn't investigate or even suspect that you might have a perception of impropriety by your dealing and that because of the very favorable business deal you have made and the circumstances around it and the fact that it was a pending Federal matter, et cetera, et cetera, and that therefore it just didn't jog your memory at all, and you didn't feel that you should be concerned or worried about it, and thus just didn't recollect that the testimony in the grand jury, three months after being prompted by an FBI investigation, that you just didn't consider it of any concern or trouble at that point.

Judge NIXON. Senator Jeffords, I knew that I had committed no crime. And it turns out that I had committed no crime. It started off with an accusation of illegal gratuity; it started off where I was innocent of that, and it wound up where I was innocent of it. I was acquitted of it, and he admitted he had no case.

So why should I have been concerned about that particular aspect? I had done nothing illegal. I had not used my office in any way. I had received nothing illegal.

Senator JEFFORDS. Thank you.

Judge NIXON. Yes, sir.

The CHAIRMAN. Mr. Heflin?

Senator HEFLIN. Judge Nixon, you made the statement in regards to the jury verdict that a Federal judge was not popular in Mississippi. You took the bench in 1969. Did you deal with many integration cases?

Judge NIXON. I took the bench in 1968—

Senator HEFLIN. Sixty-eight.

Judge NIXON [continuing]. Yes, Senator, many. Among other things, I desegregated the Mississippi Highway Patrol; I was the first one to give the blacks the opportunity to become members of the Patrol and still had jurisdiction of that case when all this happened, making sure that they were given equal rights to be patrolmen, and it has worked out beautifully without imposing quotas. I had to do with many school integration cases in Mississippi and many other civil rights matters. Those were some of the opinions that I rendered and decisions that I made that I am sure were not popular with a lot of the people in Mississippi. I am not saying that about all of the people of Mississippi.

But I had a jury consisting of a lot of people from various areas of the State that may not have been known as being overly friendly to the black people.

Senator HEFLIN. What was the makeup of the jury—how many blacks, how many whites?

Judge NIXON. Two elderly black gentlemen and 10 whites. We had a 12-person jury.

Senator HEFLIN. Were there women on it?

Judge NIXON. Yes, sir, quite a few women.

Senator HEFLIN. There were women on the jury?

Judge NIXON. On the jury.

Senator HEFLIN. You don't remember the number?

Judge NIXON. I'd say there were at least six or seven.

Senator HEFLIN. You testified, regardless of the date, that you went to the farm and that Bud Holmes spent a good deal of time on the telephone—is that right—while you were there, as I recall?

Judge NIXON. He what, Senator?

Senator HEFLIN. He spent a lot of time on the telephone.

Judge NIXON. Yes, sir, as he usually did.

Senator HEFLIN. And that during the time he was on the telephone, he called you and gave you the phone, and Wiley Fairchild was there. Was that in the same room where you were?

Judge NIXON. Yes, sir.

Senator HEFLIN. How far were you apart?

Judge NIXON. I'd say perhaps as far as you and I are, with the Hank Williams records playing, and me with my back to the—to him.

Senator HEFLIN. How long would you say did he talk over the telephone before he called you and gave you the phone?

Judge NIXON. Well, I don't know how long he talked to Wiley Fairchild, because I don't know when he made that call, but he had been on the phone quite a while, I know, answering the phone and talking on the phone, as he usually did.

Senator HEFLIN. You said you couldn't hear—I believe you testified you couldn't hear what was said because of the loudness of the music.

Judge NIXON. Well, that plus the fact that I wasn't trying to listen to his conversation, Senator. I had no interest in Bud's conversations on the phone. I had no idea he was calling Wiley Fairchild.

Senator HEFLIN. I'm a little disturbed about that in that you appear to be a very courteous man. Would it be an act of discourtesy to play music loud while someone would be talking on the phone?

Judge NIXON. Well, we were listening to the records and playing them, and Bud was on the telephone. If I had waited for him to get off the phone, I'd still be there. He used the phone all the time, and it never seemed to bother him—if he'd asked me to turn the music down—I'm not saying it was going full blast, but I wasn't paying attention. He talked constantly. I wasn't paying any attention to his telephone calls or what he was saying. Of course, if he had asked me to turn the music down, I would have; I didn't have it going full blast, but I had my back to him, I was at the counter, playing—he had a counter over that way with the record player—and he was back behind me sitting, I think, in a chair, using the two telephones.

Senator HEFLIN. Now, in regard to the testimony which you gave the FBI and the grand jury and then the testimony that you gave at your trial and the House committee, the FBI and the grand jury centered on largely whether you had had anything to do with the case, and it contained the words, of course, that you had not discussed it with anyone or did anything to influence anyone.

Before trial jury and then the House committee, you brought up the blackmailing. Blackmailing was not brought up with the FBI, blackmailing wasn't brought up with the grand jury, and I gather that's what you say your recall did not bring to mind, and you didn't say that at that time.

Now, from the time, whatever the date would have been, at the farm when the phone calls were made, after that time, did you read in the newspapers or hear anything to the effect that the case had been put back on the active file?

Judge NIXON. In it was either January or February—I think January—of 1983, yes, sir, and that's when it was put back according to the newspaper, now that we went back and looked at it, and in hindsight that's exactly what happened. It was passed to the files apparently at Christmastime of 1982 when apparently, Bud Holmes gave an order passing it to the files to Carroll Ingram to deliver to Wiley Fairchild as a Christmas present, as I testified, from the time it was reinstated a couple of weeks later in January 1983.

Senator HEFLIN. After it appeared in the media that the case had been returned to the active file, did Wiley Fairchild talk to you?

Judge NIXON. No, sir, no, sir.

Senator HEFLIN. Did he say anything in regards to the blackmailing after that?

Judge NIXON. Well, when we met at his office in March of 1983, yes, sir; that's when he brought up that allegation.

Senator HEFLIN. He brought that up at that time?

Judge NIXON. Yes, sir.

Senator HEFLIN. Was that after it had been returned to the—

Judge NIXON. Yes, sir, just a couple of months or so.

Senator HEFLIN. After it had been returned to the file.

Judge NIXON. Returned to the active docket.

Senator HEFLIN. I mean active docket, yes.

Judge NIXON. Yes, sir. And I remember telling him I had seen that piece in the paper about that; that's why I knew it was post-dated 1982, passing to the file and reinstatement.

Senator HEFLIN. At the time that you had the interview with the FBI, had there been other articles in the paper concerning this matter?

Judge NIXON. Not to my recollection. If so, I never saw any, Senator, and I don't think so.

Senator HEFLIN. All right. Now, from the time after the—

Judge NIXON. Of course, I didn't get the Hattiesburg paper, you know—

Senator HEFLIN. Well, did you have a secretary or somebody in Hattiesburg?

Judge NIXON. No, sir.

Senator HEFLIN. You didn't have anybody there.

Judge NIXON. Just a clerk.

Senator HEFLIN. You had a clerk there.

Judge NIXON. Yes, sir.

Senator HEFLIN. How far is Hattiesburg to Biloxi?

Judge NIXON. About 85 miles.

Senator HEFLIN. Did you see anything in the media or anything after the FBI agents had talked to you, before the grand jury met?

Judge NIXON. I'm sure I did, Senator. I'm sure there was quite a bit of stuff then.

Senator HEFLIN. Between those two times, the FBI and the grand jury, did any of that work to trigger your recall mechanism pertaining to the blackmailing?

Judge NIXON. No, sir, it didn't, because I knew I had—I wasn't that concerned, Senator, because I knew I had committed no illegal act of any kind. And Weingarten told me what he was there talking to me about in 1984—the handling of the case on the Federal level, the alleged imbalanced oil and gas transaction, and whether there was any connection between the two—and I knew that that was not the case.

Senator HEFLIN. I believe that's all.

Judge NIXON. Yes, sir.

The CHAIRMAN. Mr. Mack.

Senator MACK. Judge Nixon, let me just kind of jump around on a couple of different points.

Judge NIXON. All right, Senator.

Senator MACK. One is having to do with—you have mentioned a number of times about blackmail and that it was never raised with you with the FBI discussions or the grand jury that you testified before. Were others asked by either the FBI or the grand jury about these blackmailing allegations?

Judge NIXON. From what I understood from Carroll Ingram's testimony here this last week, he was asked a question about it and apparently was not told that he had been mentioned as one of the parties. From what I understood, they never asked it of Bud Holmes at any time, or anyone else to my knowledge.

Senator MACK. OK. During your testimony today, you mentioned something about the dates being changed on Bud Holmes' calendar or schedule having to do I think with the May 13 or May 14—what is the relevance of that? Is there more that I need to know about that?

Judge NIXON. Not that I know of, Senator, except that the calendar showed at trial that I was there on May 13, I had an appointment, and they said, well, they made a mistake, it should have been the 14.

Senator MACK. The other thing that came up today that interests me was the phone log that was introduced earlier. I believe that phone log was May 14.

Judge NIXON. Yes, sir.

Senator MACK. And it indicated that you made several phone calls?

Judge NIXON. Two phone calls as I see it—one from Carroll Ingram's office at four-something, I think it was, and on from Bud Holmes' office at 5:30 or so.

Senator MACK. That kind of leads me to believe that there might be some credibility to Bud Holmes' statement that you all met with Wiley Fairchild that particular day.

Judge NIXON. No—there was never any meeting with Wiley Fairchild, Senator, with us, with Bud Holmes and me, at no time.

Senator MACK. Excuse me—the phone call; the day that the phone call was made to Wiley Fairchild.

Judge NIXON. Well, I can tell you that it simply wasn't; according to everything we found, there was no publicity in the news media from the first part of 1982 until the first part of 1983 when the case was brought back out to the active files, that he was really mad about his name being drug through—he was really upset about having been drug through the newspapers. And that's when I referred to I recently saw that article in the paper, and he didn't say that wasn't it—he didn't say it was.

And Senator, it is entirely possible. I have been out to Bud Holmes' farm several times, many times—not many, but quite a few—and it could have been that I could have been out there on that occasion or any others. But I'm telling you the phone call was not made at that time. It was made in March 1983.

Senator MACK. OK. I appreciate that.

Judge NIXON. Yes, sir.

Senator MACK. And this is the last question because you have been here a long time, and I appreciate what you are going through.

Judge NIXON. Thank you, sir.

Senator MACK. I just want to try to get in my mind kind of the frame of mind that you were in when you went by and met with Wiley Fairchild. Again, just tell me what possessed you to go by and talk with him and kind of what you expected to find when you walked in and how you reacted when you heard the charge about blackmail.

Judge NIXON. Well, I had gone, as you know, in May 1981, by to see him, and I had talked to him on the phone from time to time, and I was there and had some free time—I had recently paid off the notes—and thought I would pay him a little courtesy call while I had some time. And I was hit square in the face with this—well, I told you—without any pre-warning of any kind or pre-notice.

Senator MACK. OK, thank you.

Judge NIXON. Yes, sir.

The CHAIRMAN. Mr. Symms?

Senator SYMMS. Thank you, Mr. Chairman.

Judge, on Stipulation Number 79, I think you said it earlier, but it says, "Judge Nixon appeared voluntarily before the grand jury and testified under oath on July 18, 1984." You were not actually ever subpoenaed to the grand jury then?

Judge NIXON. I wasn't subpoenaed, and I wasn't even requested to go, Senator. I asked to go because of the deluge of pretrial publicity and what it was doing to me and my family and the Federal judiciary.

Senator SYMMS. In this deluge of pretrial publicity—

Judge NIXON. I said "pretrial"—I shouldn't have said "pretrial" publicity—

Senator SYMMS. Pre-grand jury.

Judge NIXON. I meant publicity.

Senator SYMMS. Who was being quoted most of the time?

Judge NIXON. Informed sources—and later, Judge Parker—he was from the Middle District of Louisiana, who was designated to handle the grand jury in question because I was a district judge there, chief judge of the district—he had to eventually, on our re-

quest, issue a gag order directed mainly against the agent in charge in Mississippi of the FBI, Weldon Kennedy, and all other Federal officials, to cease giving statements to the news media and giving leaks about all this matter. And he apologized in his order for not having imposed it sooner, and Mr. Kennedy filed a response through Reid Weingarten apologizing to the courts for some of the interviews he had been giving.

Senator SYMMS. Who apologized?

Judge NIXON. Mr. Kennedy, the FBI agent in charge of Mississippi—who had called me originally to tell me that Reid Weingarten and one of his agents, White-Spunner, were coming down to talk to me and did not tell me why, and I told him fine, interview.

Senator SYMMS. In your opinion, when did you first become aware that you were a target of Mr. Weingarten's investigation?

Judge NIXON. When Weingarten called my attorney, Bill Goodman, and told him that I was going to be indicted—that's when I knew for sure, but we gathered that pretty strongly some time before that. And of course, the way he was questioning me and the things he was talking about in 1984 led us to—

Senator SYMMS. This was before—or after when you had gone before the grand jury—before?

Judge NIXON. What is that?

Senator SYMMS. When you were aware that you were going to be indicted.

Judge NIXON. Oh, no—I never did—oh, that was after, yes, sir, a good while after I went before the grand jury. And as I recall, Bill Goodman told me that Weingarten called him and told him that I was going to be indicted on a count of perjury and that if we wanted to discuss it before the indictment to see what we could do about working something out, or something to that effect, he'd be happy to meet with him, but that regardless of what—or, if he needed time to talk about it—but that regardless of what happened, I was going to be indicted. That's what Bill Goodman told me Weingarten told him.

Senator SYMMS. You mentioned a news article—maybe counsel or someone can point out where it is—about when Weingarten gave the so-called speech and said that he didn't have a case on the ethics violation.

Judge NIXON. I will ask my attorney if he could hand it to me, or hand it to you so you could read it, Senator. It was approximately a year after the trial. It was in, I think, 1987.

Mr. STEWART. Pardon me. It was an exhibit in the House hearings, and I don't believe I have it with me. If you have a volume of the exhibits, I could find it there.

Senator SYMMS. Well, someone can surely get that for me.

Mr. STEWART. I can bring it in the morning.

Senator SYMMS. That would be fine, that would be fine.

What I am trying to get at is Weingarten gave this speech after all the facts—I mean, after the trial—and admitted that he knew he didn't have the case, but he pressed it anyway?

Judge NIXON. No. Here is what he said in effect—that he could not fault the jury for finding me not guilty because the evidence did not support the charge. But during the trial, it is my understanding he told two different reporters—Fred Strasser of the Na-

tional Law Journal and Tom Brennan of the *Jackson Clarion-Ledger*—that he had grave doubts that he could prove—or words to that effect, if not stronger, I don't know—the gratuity charge.

Senator SYMMS. But he still pressed the case.

Judge NIXON. Yes, sir. He pressed it, and the judge let it go to the jury with these perjury charges.

Senator SYMMS. Thank you, Mr. Chairman. I have no more questions.

Thank you, Judge.

The VICE CHAIRMAN. I have one item I'd like to clear up, Judge.

Judge NIXON. All right, sir.

The VICE CHAIRMAN. Stipulation Number 80, Judge Nixon retained counsel prior to his grand jury appearance and was represented by counsel at the time of his testimony—do you remember the date on which you retained counsel?

Judge NIXON. No, I don't, Senator Danforth. And incidentally, I retained Mr. Goodman, who is strictly a civil business lawyer. At that time, I didn't think there was any need to retain a criminal lawyer because I knew I had done nothing criminal. Bill didn't try any criminal cases or handle any—

The VICE CHAIRMAN. Why did you retain him?

Judge NIXON. Because of the oil and gas transaction question that they were looking into, and also because he was a good lawyer and a good friend and a topnotch lawyer. In hindsight, I imagine if I had retained a criminal lawyer, he'd have advised me not to go before a grand jury voluntarily no matter whether you are innocent or guilty, and give testimony, because Weingarten admitted that in that news article later, that my conviction of perjury was going to chill anyone from appearing voluntarily before a grand jury from now on—and had already done so, I think he said. You'll be able to read the article, Senator.

The VICE CHAIRMAN. If you want to claim the privilege, fine, but I am just curious—do you know whether or not—what is the name of the lawyer—Goodman—

Judge NIXON. Yes, sir.

The VICE CHAIRMAN [continuing]. Do you know whether or not Mr. Goodman read the transcript of your interview with Mr. Weingarten?

Judge NIXON. I don't know, but I would certainly assume that he did, Senator. I mean, I don't specifically recall, but I'm quite sure he must have.

The VICE CHAIRMAN. Did you go over with him questions that might occur before the grand jury?

Judge NIXON. Well, the thing about it, I guess I really don't recall exactly. It was shortly before the grand jury—it was after we learned it was going to be convened, I am quite sure. I don't know that I would have had Mr. Goodman before—but I don't know, I don't recall one way or the other.

The VICE CHAIRMAN. Well, the stipulation says that prior to your grand jury appearance, you retained counsel.

Judge NIXON. That's correct, yes, sir, before the grand jury appearance, yes, sir.

The VICE CHAIRMAN. And what was the purpose of retaining counsel?

Judge NIXON. To help me get all the records together on the oil and gas transaction and present it to the grand jury after we learned the grand jury was being empaneled. And we worked hard on it, and we found out among other things——

The VICE CHAIRMAN. Not to give you legal advice; just to help you get some written documents together?

Judge NIXON. Well, I guess perhaps both, to be fair about it, in connection with the oil and gas transaction. If I had thought that I had any criminal exposure because of anything I had done, I would have employed a good criminal lawyer. I knew the good criminal lawyers and civil lawyers in our district.

The VICE CHAIRMAN. You didn't think you were exposed at all?

Judge NIXON. Senator, I knew I had done nothing illegal——

The VICE CHAIRMAN. Fine, but you——

Judge NIXON [continuing]. And I thought at that time——

The VICE CHAIRMAN [continuing]. You didn't think you were exposed?

Judge NIXON. Well, not based on anything that I had done.

The VICE CHAIRMAN. You had already been tried and convicted in the press; this had already been a big matter in the press, and a grand jury had been convened.

Judge NIXON. It was an ongoing matter. I don't know how much of it was before and how much of it was after the grand jury appearance, the publicity; I can't separate it.

The VICE CHAIRMAN. Did you go over your interview with Mr. Weingarten with Mr. Goodman?

Judge NIXON. I am sure I must have, yes, sir.

The VICE CHAIRMAN. Do you remember discussing with him the meeting you had with Wiley Fairchild?

Judge NIXON. No, sir, because I didn't recall it. I did not recall anything about that until after Bud Holmes came by. And that's when I called Bill Goodman, as I stated.

The VICE CHAIRMAN. Do you remember going over the questions that were asked of you in the interview relating to discussions with Wiley Fairchild?

Judge NIXON. Senator, I don't recall exactly what we went over. That has been a pretty good while ago, and we have been—there is so much that has occurred since that time, you just cannot imagine. I wish I could answer it with more specificity, but I don't want to guess at something. But I am quite sure we went over it, yes, sir.

The VICE CHAIRMAN. Thank you.

The CHAIRMAN. Mr. Stewart and Mr. Baron, can we conclude with Judge Nixon?

Mr. BARON. Mr. Chairman, I would anticipate that Mr. Cardin does have a few questions that he will want to put. If you recall, we did terminate the cross at some juncture in order to permit the panel to question, so I think that Mr. Cardin does intend to have a few more questions—not a lot.

The CHAIRMAN. Do you have any redirect, Mr. Stewart?

Mr. STEWART. I might have a question or two, but I'd rather do it when they're done. If he's not done, I'm not done, Mr. Chairman; I am sorry.

Senator MURKOWSKI. Mr. Chairman, I have one short question if it is permissible, or I'll wait until tomorrow.

The CHAIRMAN. No, no. Go ahead—well, we'll get back to the panel. We have a vote at 6:15, so with the panel's indulgence, if there are additional questions for Judge Nixon, I'm sure he would like to entertain them.

But for the lawyers, I will talk to my panel members this evening. I think we will conclude the questions of the panel this evening. I think I can get agreement from my members to conclude their questions. We have to do it at some point, and it seems to me this is as good a time after the long examination of Judge Nixon.

I will not, of course, if the House wants to press on with further cross-examination, but I do think there ought to be an exploration of that, Mr. Baron, with the managers as to whether or not that is necessary—and the same with Mr. Stewart. I won't at this moment limit it, but I hope you will explore as to whether or not any further examination is necessary.

And then let's conclude this other procedural matter before we go back to the panel's questions. It is my understanding that you both want to make closing statements, and we'll say 30 minutes on a side; is that reasonable?

Mr. STEWART. Mr. Chairman, I don't want to try anyone's patience. I'll shoot for 30 minutes; I could run over five or ten—

The CHAIRMAN. Well, it will be a liberal 30 minutes.

Mr. STEWART. OK.

Mr. BARON. I'm sure that's acceptable to the House.

The CHAIRMAN. All right, and we will do that in the morning.

Is there any other evidentiary matters or anything else that needs to be concluded this evening?

Mr. STEWART. Mr. Chairman, we would move into evidence our exhibits. Also, we have just today received a copy of an affidavit in response to something that just came up last Friday. I have not had a chance to give it to the House managers. I would propose to give it to them tonight and let them look at it and determine if it can be stipulated for the morning.

The CHAIRMAN. That will be fine.

Mr. BARON. Insofar as the House is concerned, we have no rebuttal witnesses to put on, but we do have, I believe, three or four documents that we would want to submit in response to the case that has been put on by Judge Nixon—it shouldn't take more than five minutes.

The CHAIRMAN. All right. With the conclusion of Judge Nixon's testimony, your case is concluded, is that correct?

Mr. STEWART. He is our last live witness, yes, sir.

The CHAIRMAN. Mr. Murkowski.

FURTHER EXAMINATION BY THE COMMITTEE

Senator MURKOWSKI. Thank you, Mr. Chairman.

Judge, I am curious to know, again, the circumstances surrounding the initial investment and the portion of the rationale that covers the backdating. And you touched on it, but did not give a very detailed explanation of the rationale for backdating. You said it was something that was occasionally done or some reference—and of course, one would look at the dates and the backdating and conclude that there was an attempt to finalize the deal prior to any

notoriety associated with your case—that's the conclusion one comes to.

What is the rationale for the backdating?

Judge NIXON. Senator, when the deeds and notes were brought down to me by Carroll Ingram in the first part of 1981—the conveyances of royalty interest had been executed, of course, when they were brought to me; I executed the notes. The date on the notes was February of 1980, and this was about March 1981, the first part of March. I asked Carroll Ingram about them, and he stated that it was not unusual and very customary in the oil and gas business to date the deeds of conveyance to conform with the time that the oral agreement had been reached, an agreement had been reached with reference to the conveyance of the minerals. He said that was for several reasons, and I believe he mentioned something about so that the actual date of the agreement would reflect the value of the minerals at that time, in case something happened in the interim one way or the other.

And I had nothing to do with the dating of the instruments. I did not know that that date was going to be on them. They were brought to me, and I took Carroll Ingram's word that it was usual and customary and perfectly legal.

And you see, Senator, nothing can be legally conveyed in Mississippi with reference to real estate or oil and gas in connection with real estate unless it is in writing, that is, from the standpoint of legality. That is called the statute of frauds. But once the written conveyance is signed, the effective date relates back to the date thereon, and it is not unusual. And we had some testimony about that last week; there is no dispute about that. There wasn't any dispute in the trial from the Government's witnesses as I understood it.

Senator MURKOWSKI. In view of that—I gather they were backdated about one year——

Judge NIXON. Yes, sir.

Senator MURKOWSKI [continuing]. And therefore your interpretation of when the obligation became a reality was one year prior to your signing the note, or one year prior to February or March 1981; is that correct?

Judge NIXON. Yes, sir. When I went before the grand jury, I voluntarily informed them of that fact and——

Senator MURKOWSKI. So you assumed an obligation of about \$9,500 or thereabouts back technically in 1980, in February or March.

Judge NIXON. Yes, sir.

Senator MURKOWSKI. And did interest accrue from that date?

Judge NIXON. Yes, sir. When I went to the grand jury, we called to their attention something that Mr. Goodman, my attorney, who is a good business lawyer, had found out—that I was paying interest from 1981 instead of 1980, and I should have been paying it from 1980.

Senator MURKOWSKI. Did you pay it from 1980?

Judge NIXON. Well, within a few days, I get a letter from Mr. Wiley Fairchild's bookkeeper or accountant, with a statement that I owed them something like \$1,300 or \$1,400 interest from that year before.

Senator MURKOWSKI. When did that take place when you were reminded that you had to pay interest from 1980 rather than—

Judge NIXON. After I employed Mr. Goodman and shortly before I went before the grand jury. We had assumed we were doing it. I'd always have my secretary call to find out how much—when I made some payment on the notes before, how much interest—

Senator MURKOWSKI. But didn't it occur to you to look at the terms of the note, which I assume would—I don't have the exhibit, but I would ask if the notes did not calculate interest then from—

Judge NIXON. No, sir, it did not; it just said "from date".

Senator MURKOWSKI. And the date, though, was March 1980.

Judge NIXON. February; yes, sir.

Senator MURKOWSKI. February 1980. So indeed the note did clearly identify when interest was to be calculated from, and so—

Judge NIXON. And neither Fairchild's office nor mine was calculating it. So when we brought that to the attention of the grand jury, I got this letter from Mr. Fairchild's accountant a few days later—they found out some way, either Mr. Weingarten told them what had come out in the grand jury, or they found out some other way, and they billed me for that extra interest rate, which we determined was an overbilling of approximately \$400 or \$500. So it was 900-some-odd dollars. We paid it by check immediately. I told Mr. Goodman about it, and he said, "What I'm going to do is I want to get in touch with Reid Weingarten"—the Federal prosecutor—"right away and tell him about this letter so it won't look like there is any subterfuge going on." And he either wrote or called him or did both, and Weingarten admitted that as a fact that we did that.

Senator MURKOWSKI. When did you get your first payment or royalty or return of any kind on this investment?

Judge NIXON. It was the first part of 1982.

Senator MURKOWSKI. Eighty-two, so from the period of April of 1980, there was no return, and you were paying interest technically from 1981, but later paid it back until 1980—

Judge NIXON. Technically.

Senator MURKOWSKI [continuing]. And your first return was 1982?

Judge NIXON. Technically, it was due from that date, yes, sir.

Senator MURKOWSKI. OK.

Judge NIXON. And when I filed my financial disclosure statement, Senator, I did not claim it as a 1980 transaction. I claimed it as a 1981 transaction, so there was certainly proof beyond pre-adventure that we weren't trying to backdate something to prove something had occurred before the drug bust, as they had suspected and accused me of.

Senator MURKOWSKI. Thank you.

The CHAIRMAN. Mr. Chafee.

Senator CHAFEE. Judge Nixon, in answer to the previous questions, you said that you told Mr. Weingarten very quickly so there would be no subterfuge about the interest; but you did not have the same apparent incentive to tell Mr. Weingarten about the discrepancy in the prior testimony you had given before either to him in the FBI interview or the grand jury investigation, when your

memory had been jogged by the visit to the courthouse by Bud Holmes. Is that correct?

Judge NIXON. Senator, we had a very different time period, we had a very different atmosphere, and we had a very different situation. And Mr. Weingarten was hell-bent on indicting me, and did, for the gratuity charge and perjury charges. And as I told you, our discussion was that—we went in there knowing I was innocent of what they were investigating, the gratuity charge, the only thing being investigated, which I was exonerated on, and I had come out being indicted on it and these other matters. We knew I was a target. I was targeted, and there was no turning back for Mr. Weingarten. He was going to indict me on anything he could, and the more we had done, the worse it would have gotten, I'm sure—in hindsight, that is.

Senator CHAFEE. You have a pretty miserable impression of the Federal system, prosecutorial and judicial. You gave the impression that around the courthouse, I think in your testimony you said it was like the KGB or the Gestapo. That was around the Federal courthouse at your trial in Hattiesburg—

Judge NIXON. No, not during the trial, Senator; while the grand jury was meeting. They had marshals from out-of-state all over the place. It was an atmosphere that you had to state why you were going on the floor where all the courtrooms were, where the grand jury was meeting—it was a real bad atmosphere. And I'm not condemning—

Senator CHAFEE. How long after the grand jury was your indictment?

Judge NIXON. I was indicted as I recall August the 30 or 31 of 1985. I went before the grand jury in July 1984.

Senator CHAFEE. In 1984.

Judge NIXON. Yes, sir.

Senator CHAFEE. So there is quite a space between.

Judge NIXON. Yes, over a year.

Senator CHAFEE. And you said Federal judges weren't very popular. You gave the impression the jury was out to get Federal judges—is that a fair statement?

Judge NIXON. I can't say the jury was out to get me, but I said we had to do a lot of things in performance of our judicial duties that subjected us to that type—

Senator CHAFEE. Do you think you got a fair trial?

Judge NIXON. No, sir. I didn't get a fair trial for one main reason, because they threw the gratuity charge in to taint the entire trial knowing they didn't have a case, the corruption charge, and most of the trial was taken up by testimony trying to insinuate and trying to prove that I was guilty of corruption, when he knew the evidence he had would not support it.

Senator CHAFEE. The Federal judge let all this go on.

Judge NIXON. Yes, sir, from St. Louis.

Senator CHAFEE. Thank you.

Judge NIXON. I say let it go on—he let the case go to the jury on the gratuity charge.

The CHAIRMAN. I believe that concludes all the questions of the panel.

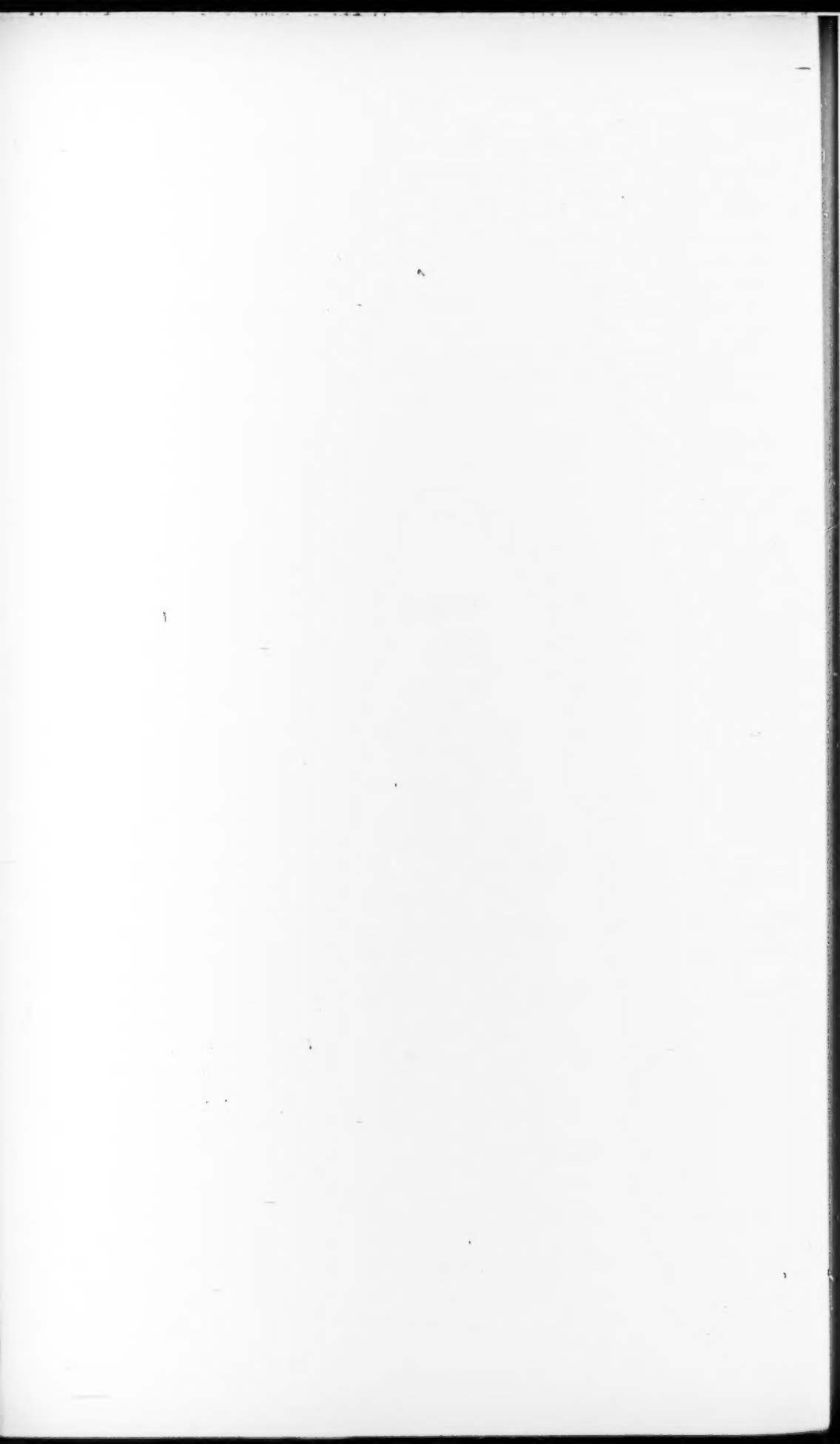
Judge Nixon, thank you very much for your patience and long suffering in a long and grueling day.

Judge NIXON. You are very welcome, Mr. Chairman.

The CHAIRMAN. We will proceed at 9:30 in the morning as planned. There will be no more questions of the panel. This portion has concluded. We will see what counsel would like to do in the morning and then hopefully go immediately to closing arguments.

I thank all concerned. We stand in recess until 9:30 in the morning.

[Whereupon, at 5:58 p.m., the proceedings were adjourned, to reconvene Wednesday, September 13, 1989, at 9:30 a.m.]



IMPEACHMENT TRIAL OF JUDGE WALTER L. NIXON, JR.

WEDNESDAY, SEPTEMBER 13, 1989

U.S. SENATE,
IMPEACHMENT TRIAL COMMITTEE,
Washington, DC.

The committee met, pursuant to notice, at 9:37 a.m., in room SH-216, Hart Senate Office Building, Hon. Wyche Fowler, Jr. (chairman of the committee) presiding.

Members present: Senators Fowler (chairman), Danforth (vice chairman), Heflin, Reid, Robb, Kohl, Chafee, Murkowski, Jeffords, Mack, and Symms.

House Managers present: Mr. Edwards, Mr. Cardin, Mr. Sensenbrenner, and Mr. Brooks.

Counsel present: David O. Stewart, Peter M. Brody and Michael B. Holloman, counsel for Judge Nixon; Morgan Frankel, Assistant Senate Legal Counsel; and Donald A. Purdy, Jr., counsel for the Senate Impeachment Trial Committee; Alan I. Baron, special counsel, House of Representatives; Peter E. Keith, assistant special counsel, House of Representatives; Daniel Freeman, Colleen Kiko, and Catherine LeRoy, counsel, House Judiciary Committee.

Staff present: Anthony L. Harvey, administrator, Senate Impeachment Trial Committee; P. Casey McGannon, staff assistant, Senate Impeachment Trial Committee; Isabel McVeigh, staff assistant, Senate Impeachment Trial Committee.

Katherine Urban and Dorothy Wadley, staff members, House of Representatives.

The CHAIRMAN. We will resume the matter of the impeachment proceedings of Judge Walter L. Nixon, Jr.

Mr. Edwards and the House, is there anything further? Mr. Cardin?

Mr. CARDIN. No further cross-examination.

Mr. EDWARDS. No further questions.

The CHAIRMAN. Thank you.

Mr. Stewart.

Mr. STEWART. I have two matters. I'll be as quick as I can.

The CHAIRMAN. Please.

TESTIMONY OF WALTER L. NIXON, JR. (continued)

FURTHER DIRECT EXAMINATION

Mr. STEWART. Judge Nixon, you were asked questions late yesterday afternoon, perhaps when you were getting tired, about the rea-

sons you thought that there had been a conviction returned in your case. Have other reasons occurred to you that you do want to note for the record since then?

Judge NIXON. Yes. In addition to the reasons that I stated, several things have come to light since the trial of the case that we did not have information on at the time of the trial and could not utilize. Most of this was information that the Government had failed to produce as they were required to under the court order:

Specifically, the script that had been prepared for Mr. Wiley Fairchild to use in his testimony before the grand jury, which was prepared by his employee, Mr. Baltar, with the assistance and urging of Mr. Weingarten, the prosecutor; as well as the script that he used and had in his pocket by his own admission at the time that he testified at the trial, both of which related to the time of the investment in the oil and gas transaction; and also the dating of the phone call, both of which stated—required that he place the transaction after the drug bust and the phone call before the passing to the files. Also, the fact that he recanted and testified very clearly and very openly in the 2255 post-conviction hearing in court in Jackson last year that he had lied on both of those points when he testified as he did against me. Also, the fact that the prosecutor had promised him several things, one of which was related to a pardon for him, and the other was with respect to his son, Drew Fairchild's case. That is, the prosecutor promised to help him with respect to his case, and he did so by having him indicted in Federal court and plead the same day to cut off the State court prosecution, or at least pretermit the State court sentence.

Also, Mr. Holmes' testimony for the first time before the House subcommittee that when he wanted to discuss the *Drew Fairchild* case with me on March 11, 1983, that I would not let him do so, that I stopped him and told him that I did not want to hear about it, as well as certain other information.

Mr. STEWART. OK. Thank you, Judge.

The other matter I wanted to ask you about, Mr. Cardin asked you some questions about a couple of cases in which you did not recuse yourself appeared to involve Fairchild Construction. I wanted to ask you about a case he didn't ask you about, which is reflected in Respondent's exhibit 12. Perhaps if you could turn to that.

Judge NIXON. All right. Is that in the green book?

Mr. STEWART. Yes, in the bottom green book. The one below.

Judge NIXON. All right.

Mr. STEWART. Do you recall that, the matter reflected in Exhibit 12?

Judge NIXON. Yes.

Mr. STEWART. And what is that?

Judge NIXON. That is a case in which I had been asked to hear a temporary restraining order. It's a case titled *Transcontinental Gas Pipeline Corporation v. Mississippi State Oil and Gas Board, et al.*

Mr. STEWART. When did it come before you?

Judge NIXON. It came before me in * * * I'm trying to find the date, Mr. Stewart.

Mr. STEWART. It may be on the next page.

Judge NIXON. October 13, 1982.

Mr. STEWART. And were the Fairchilds involved in that case?

Judge NIXON. Yes.

Mr. STEWART. And what was your conduct in relation to that case?

Judge NIXON. We were already in chambers ready to hear the temporary restraining order, and I noticed that, and I immediately recused myself and asked the clerk to reassign it in accordance with our rules to another judge. Although it was an emergency matter, I still recused, of course, and it was reassigned immediately to another judge who heard that temporary restraining order, either that day or shortly thereafter.

Mr. STEWART. Thank you, Judge.

Senator CHAFEE. What is that date again, please?

Mr. STEWART. It's October 1982.

The CHAIRMAN. Any cross examination on these matters, Mr. Cardin?

Mr. CARDIN. No cross.

Senator HEFLIN. Mr. Chairman, I have a question.

The CHAIRMAN. Judge Heflin.

FURTHER EXAMINATION BY THE COMMITTEE

Senator HEFLIN. You heard Bud Holmes testify. In the event that you contend—let me rephrase it.

Upon the assumption that his testimony is inaccurate, and that he, in effect, is an antagonistic witness to you—that's an assumption. I mean just assuming that. I'm not to say that that's a fact, but for a hypothetical. What reasons do you have to believe that he might testify falsely and antagonistically against you?

Judge NIXON. Senator, he was charged with five felony counts. He was indicted every time he went before the grand jury up until the last time when he made the deal with the Government, which resulted in the dismissal of all five felony counts and letting him plead guilty to a misdemeanor contempt-of-court charge, in which he was sentenced to pay a fine and serve one year in jail. Whereas, the statute read that he could be given either sentence or fine and not both, which he testified in the House subcommittee hearing that had been discussed with Weingarten, the prosecutor, not long before he entered the plea and was sentenced. That is, he was told by Weingarten the court couldn't impose both upon him. And Weingarten stood mute while the district judge erroneously imposed both, and Holmes immediately went and paid the fine in New Orleans by cashier's check or certified check and didn't serve a day in jail as a result of it because it was an illegal sentence.

He made the deal. He was brought back in, immediately after the deal was made, before the grand jury and changed his testimony considerably. And he was locked in then. To revert back or to tell the truth, he would have had to give different testimony then and would have been subjected to another perjury charge.

Senator HEFLIN. You mean to say that it was nothing personal but that the set of circumstances that he found himself in, if he had testified in your case as you would say would be truthfully and accurately, he would then have been subjecting himself to further prosecution?

Judge NIXON. I would like to believe that was the only reason. Senator HEFLIN. Are there other reasons?

Judge NIXON. Well, I don't know. You said the personal reason.

Senator HEFLIN. Well, I mean any reasons that he might. I'm not trying to limit it. If he testified inaccurately and untruthfully against you, why?

Judge NIXON. I think I've given you the reason, Senator; because he was, to say the least, induced to do so. If you'll notice, each time he went before the grand jury, he gave different testimony concerning these matters, crucial matters. And only the last time did he state that I placed the phone call and gave other damaging testimony. In fact, he—that's my answer.

Senator CHAFEE. Let me ask one question if I might, Mr. Chairman.

I have trouble with these telephone conversations, the dates of the telephone calls that have corroborated that you were in Carroll Ingram's office and made a call following your dental appointment, and then subsequently you were in Mr. Holmes' office at 5:30 and made a call.

Do you have any explanation for that? You say you don't even remember at all going up to Hattiesburg to the dentist that day, but these telephone calls do corroborate, back up Mr. Holmes' story that you were there.

Judge NIXON. Senator, they back up his story that I was in Hattiesburg, but as I say, I don't recall what happened that day. The call was made from his office. I went to his office quite often when I was in Hattiesburg and also to Carroll Ingram's.

Senator CHAFEE. And you have no recollection whatsoever of being in his office that particular day? It was late in the day, presumably quite a bit after—certainly an hour after your dental appointment. Since you'd been to Carroll's office at 4:30 and you were at Bud Holmes' office at 5:30, presumably the dental appointment was earlier that day.

Judge NIXON. Senator, if I could recall, I'd certainly tell you. And I'm not saying I wasn't, of course. As I stated previously, I was in Hattiesburg, and it wasn't unusual for me to go by Carroll's office or Bud's office. But I'm telling you the date that the call was made because not only do I recall that it was the time I was trying the bank robbery case on March 10 and 11, 1983, but I remember, in going back over it and thinking about it, that that's when the newspaper article was referred to by me when I talked to Mr. Fairchild. That is, with reference to the case having been passed to the files and brought back out. And the case was passed to the files, apparently, at Christmas time of 1982 and brought back out in January 1983.

Also, I relate it to the time that I borrowed the records, and I borrowed the records on March 11, 1983, and took them home for my wife to record. She had had her periodontal surgery, and I wanted to get home. And I remember she was in bed when I got home and still awake, and I told her about the records, and she wasn't too happy about them because she doesn't like—she doesn't share my like of Hank Williams music.

Senator CHAFEE. Thank you, judge.

The CHAIRMAN. Mr. Kohl.

Senator KOHL. Judge Nixon, just to follow up on Judge Heflin's comment, what about Fairchild? He seems to corroborate what Holmes said about that telephone call. How do you judge his comment to be—why he said it?

Judge NIXON. Senator, if you'll compare the testimony, I think there's a great discrepancy in what the two of them testified to. First of all, Holmes said that I got on—that he told Wiley Fairchild he was going to pass Drew Fairchild's case to the files. Mr. Fairchild said there was no mention of such in the telephone call.

Secondly, he said that Holmes said that I said that I was going to—I appreciate him putting me in the oil and gas transaction, et cetera, et cetera. Mr. Fairchild said that no such thing was said.

So I think there is a definite discrepancy in their testimony. I think that Mr. Holmes' and Mr. Fairchild's testimony was not consistent.

Senator KOHL. And you're saying that Holmes' testimony, in your opinion, was given in a way that would best benefit Holmes?

Judge NIXON. Yes, sir.

Senator KOHL. Whereas, Fairchild you put in a different category.

Judge NIXON. [Nodding.]

Senator KOHL. His testimony is in dispute with Holmes' testimony?

Judge NIXON. Yes. And also, if you'll recall—I don't know whether you know it or not, but Holmes testified in the House subcommittee that Weingarten had told him he had to give him a smoking gun in order to get a deal; and also told him initially, or indicated to him that if he would give him information on me, he didn't have to be indicted, which—

Senator KOHL. Weingarten said that to Holmes?

Judge NIXON. Yes, sir. That's Holmes' testimony before the House subcommittee.

The CHAIRMAN. Mr. Danforth.

The VICE CHAIRMAN. Judge, going back to the afternoon that you went out to Bud Holmes' farm, that day you were trying a case in Hattiesburg?

Judge NIXON. What day is that, Senator?

The VICE CHAIRMAN. The day that you met with Wiley Fairchild, the day in question, and then you ended up going out to Bud Holmes' farm.

Judge NIXON. A bank robbery case, Senator.

The VICE CHAIRMAN. Yes. And what time of day approximately did you finish your judicial duties that day?

Judge NIXON. I think the jury came in—I don't recall whether it was late morning or early afternoon, Senator, very early afternoon or around noontime, with a guilty verdict.

The VICE CHAIRMAN. That concluded your judicial duties for the day?

Judge NIXON. Yes, sir.

The VICE CHAIRMAN. And then—

Judge NIXON. I don't know whether I had anything else there or not. Many times we did, so—

The VICE-CHAIRMAN. Was it subsequent to that that you went to see Wiley Fairchild?

Judge NIXON. Yes.

The VICE CHAIRMAN. After the case was concluded?

Judge NIXON. Yes, sir.

The VICE CHAIRMAN. And then you went from his office back to your chambers?

Judge NIXON. Yes, sir.

The VICE CHAIRMAN. Did you do other judicial business then?

Judge NIXON. I don't recall exactly what I did that day, but I went back. I could have had some more duties. I could have gone back to get all of my records and what have you together to take back. I'm not sure which.

The VICE CHAIRMAN. Then you went from there to Bud Holmes' office?

Judge NIXON. No, sir.

The VICE CHAIRMAN. You did not?

Judge NIXON. No, sir. I went directly to the farm in my automobile that afternoon.

The VICE CHAIRMAN. You did not go to his office. And you went to the farm, and you drove yourself, and nobody else was in the car with you.

Judge NIXON. Yes, Senator.

The VICE CHAIRMAN. And approximately how long does it take to drive from your office in Hattiesburg to Bud Holmes' farm?

Judge NIXON. I would say probably 20 to 30 minutes, anyway.

The VICE CHAIRMAN. And how long did you spend at Bud Holmes' farm?

Judge NIXON. I think I left somewhere in the neighborhood of 7:00 p.m. or a little later, probably a little later than that.

The VICE CHAIRMAN. You got there when?

Judge NIXON. A little after 5:00. I'm approximating these times.

The VICE CHAIRMAN. You were there about two hours?

Judge NIXON. I would say approximately.

The VICE CHAIRMAN. And then you went from there to back home to Biloxi?

Judge NIXON. Yes, sir.

The VICE CHAIRMAN. How long does it take you to get home?

Judge NIXON. Approximately two hours.

The VICE CHAIRMAN. And is Bud Holmes—if you went from Hattiesburg to Bud Holmes' farm and then home to Biloxi, is it about in the same direction, or are they in different directions?

Judge NIXON. No, sir. They're in different directions. His farm was somewhat, I think east or northeast of Hattiesburg, and Biloxi and Ocean Springs—actually, Ocean Springs is where I lived, right next to Biloxi—is south, due south of Hattiesburg.

The VICE CHAIRMAN. It's roughly in the opposite direction?

Judge NIXON. Well, I don't know whether you'd say opposite. I'd say from 3:00 to 6:00 o'clock on a clock, the difference from Hattiesburg—his office is—I mean his home was about maybe 2:00 to 4:00 o'clock, and my home—from 12:00—and my home was—I mean from the middle of the clock, and mine was south.

The VICE CHAIRMAN. And your purpose for going there was to get some Hank Williams records?

Judge NIXON. That we had been talking about several times to get together and tape, yes, while he was loaning them to me.

The VICE CHAIRMAN. Something was said earlier about getting some turkeys. I think Mr. Holmes said you were getting some turkeys that you shot.

Judge NIXON. Not on that occasion. One time I went and picked up some turkeys.

The VICE CHAIRMAN. But on this occasion, it was exclusively for the records?

Judge NIXON. Yes, Senator.

The VICE CHAIRMAN. Thank you.

Senator HEFLIN. Let me ask one more question.

Did Carroll Ingram ever phone you from Hattiesburg to your home in Biloxi that you can recall?

Judge NIXON. I don't recall, Senator. It would not have been too unusual. I know he has called me several times throughout the years.

Carroll and I, we were close friends. We visited in each other's homes. We socialized; our wives did, too. He had a vegetable—a traditional vegetable dinner, all-vegetable dinner at his home once a year and invited his closest friends, I'd say probably 10 or 15, and we were invited on a couple of occasions.

The CHAIRMAN. Judge Nixon, at the conclusion here, I was just sort of thinking. It's going to be my responsibility, without any adjectives, to present this matter to the full Senate some time next month and to characterize the case for all hundred Senators. As you know, this is an evidentiary panel.

Judge NIXON. Yes, sir.

The CHAIRMAN. Each one of us will make up our own minds to the best of our ability with all the testimony and try to render a fair decision, as is our obligation.

Because of my responsibilities as chairman, I—all of my colleagues here I know will spend a lot of time with the record, comparing their notes to all the records in the case before they make up their mind. In August, because I knew I was going to be chairing the panel, I have read just about all of it. I read your complete trial transcripts, House proceedings, in order to try to prepare myself.

The questions that I want to conclude with here before we go to the arguments of the counsel is once again just to make sure that, from your lips, I will—regardless of what decision I make, I want to make sure that, to the best of my ability, I can report your knowledge and your testimony and your characterization of your actions.

Now, my understanding is this, based on what you've said to us: That you continue to assert, as you have throughout all the judicial proceedings, that you in no way ever asked anybody to do anything concerning the disposition of the *Drew Fairchild* case; is that correct?

Judge NIXON. Yes, Senator, that's correct, and I don't think there's any evidence to the contrary.

The CHAIRMAN. And it is still certainly your position that you never handled any part of it and never talked to anybody, State or

Federal prosecutor or judge, that in any way influenced anybody; is that correct?

Judge NIXON. I didn't influence anyone. I don't think anyone—I don't know whether anyone stated I did, but, yes, that's my position, Senator, that I did not do——

The CHAIRMAN. I'm asking your position.

Is it also your——

Judge NIXON. Except what I told you that I recall now with respect to March 11, and I recalled it for the first time in February 1985——

The CHAIRMAN. Well, that's what I'm getting to now. Is it your position now, is it your position today before this committee, that you never discussed the *Drew Fairchild* case with anybody?

Judge NIXON. Yes, sir. I did not have any discussion of the case itself with anyone. And Bud Holmes tried to discuss it with me, as it's charged in Count 1, and I wouldn't let him do so.

The CHAIRMAN. Well, now, yesterday you told this panel that when you were asked whether or not you discussed, ever discussed the *Drew Fairchild* case with Bud Holmes, when you were asked that by the FBI and before the grand jury, you told us that you just didn't recall it. And the reason you gave your negative answer was that you just didn't remember.

Judge NIXON. That's correct, Senator. At that time.

The CHAIRMAN. And you told this panel yesterday that had you remembered the events of March 11, 1983, that your answer would have been different.

Judge NIXON. I said in this respect, Senator, that I would have related what took place. But I would not let him discuss the case with me when he——

The CHAIRMAN. So you are still now maintaining—I'm talking about the King's English now, before laymen, before the grand jury. You knew they were laymen. You were under oath. You knew they weren't lawyers. You knew why you were there. You were represented by counsel before the grand jury. You knew about these—you now recall these conversations that you had with Drew Fairchild and with Mr. Holmes—not with Drew Fairchild, with Mr. Holmes and Carroll Ingram and Wiley Fairchild. You are still maintaining before this panel today, with your total recall now, that you never discussed the *Drew Fairchild* case with anybody?

Judge NIXON. Senator Fowler, if I had been asked a question that would have triggered my recollection and my memory of that, and if it had come to my mind, I would have told the grand jury exactly what transpired. I——

The CHAIRMAN. But you're still maintaining before this panel today that what had transpired, which you do now remember, was not a discussion in the English language sense of the word?

Judge NIXON. I would have told them exactly what transpired. I would have told them—to the best of my recollection, that is—exactly what was said. I would have told them that Bud Holmes tried to discuss the case and tell me about it, just as he testified—"Let me tell you about the case"—and I stopped him. They could have drawn their own conclusions, the jury could have, from what I told them actually transpired as to what did transpire. And that's the best answer I can give you.

I would have told exactly what took place and let the jury make that decision. I don't think we'd have had any question about whether there was a, quote, "discussion" or not because I would have related completely what did take place. And it would have been their——

The CHAIRMAN. And the reason you did not do that——

Judge NIXON [continuing]. Decision as to whether—I don't think they'd have had to decide whether it was a discussion or not because I don't think that would have been an issue. I think they would have had to just decide—at least they would have known what I remembered took place and would proceed from there.

The CHAIRMAN. And your testimony, again, before this panel—so I'll get it accurate in my presentation—the reason that you did not do that, the reason you did not relate these conversations, regardless of how we're going to characterize them, the reason you didn't relate your conversation with Paul Holmes, the reason you didn't relate your conversation with Wiley Fairchild in his office, the reason you didn't relate your conversation with Carroll Ingram is that you simply did not remember when you were asked by the FBI, and you did not remember when you were asked by the grand jury; that is correct, is it not?

Judge NIXON. Yes. It did not come to mind, Senator.

The CHAIRMAN. Thank you.

Any evidentiary matters?

Mr. BARON. Mr. Chairman, there are a few items that the House would like to put in. Technically, I guess it's our rebuttal case, but there are no live witnesses. It's simply documents.

The CHAIRMAN. Hold on one second.

May Judge Nixon be excused?

Mr. STEWART. Absolutely.

The CHAIRMAN. Your Honor, thank you very much.

Judge NIXON. Thank you, Mr. Chairman——

Senator SYMMS. Mr. Chairman, may I ask one question? It will just take a second or two.

Judge, are you still a friend of Carroll Ingram's?

Judge NIXON. Well, I certainly, yes, feel friendly toward Carroll, Senator. I have no reason to feel otherwise.

Senator SYMMS. Thank you.

Judge NIXON. Yes, sir.

The CHAIRMAN. Thank you, Mr. Symms.

Thank you, Judge Nixon.

Judge NIXON. You're welcome, Mr. Chairman.

[Witness excused.]

Mr. STEWART. I'm going to go first, Mr. Chairman, just to keep the sequence cleaner.

I would move into evidence the exhibits we've previously marked. I have three additional matters which I have not yet been able to provide to Mr. Harvey, but we will as soon as we can. Exhibit 78 is Judge Nixon's pocket calendar for 1982, and I thought that would be of interest to the panel. On May 14, it is inconclusive, but there is evidence as to where he was on that date. On December 1, you may recall Wiley Fairchild said that December 1st was a date he thought now the phone call he initially made to

Judge Nixon's chambers had occurred. Judge Nixon, according to the calendar, was quail hunting, out of the office.

The second item is exhibit 79. It's a declaration of Ms. Watkins, Betty Lou Watkins, who works for him, and attached documents, again related to this December 1 date. It's all the phone messages that were taken for Judge Nixon during that day, December 1. There is no message from Mr. Fairchild. Ms. Watkins also relates that on that day she was assembling accounting materials for Judge Nixon because he was changing accountants—his previous CPA had died—and that she thinks she made such a call to Mr. Fairchild's office. And she believes that Fairchild—some administrative person in that office called her back.

The third item is the newspaper article that Senator Symms asked about yesterday. It was in the record in the House. We just wanted to make sure it was here. That's exhibit 80.

The other two items are the sheets of paper I worked with Wiley Fairchild on which are marked with the clerk as exhibits 81 and 82. I just want to make sure the record's complete.

The CHAIRMAN. Any objection to these exhibits?

Mr. BARON. No objection.

Senator HEFLIN. Mr. Chairman, I'd like to ask Judge Nixon one more question. I've got something in my mind that is still confusing me.

The CHAIRMAN. I want to clear it up. Judge Nixon.

Senator HEFLIN. Come around.

Judge, you heard the stipulation in regards to the statement that was made before the grand jury that the House and your attorney made after some linguistic expert, in effect, supplied the word "that" and supplied the "d" to "influenced," where they stipulated that, in effect, that you never handled any part of—well, "never talked"—and the pertinent part is "never talked to anyone, Federal or State prosecutor or judge, that in any way influenced anybody."

Now, that stipulation, in effect, doesn't—leads to an interpretation of that language that you could have talked to someone, but it is qualified that if you talked to someone that it in any way influenced anybody.

Now, is it your position when you testified before the grand jury that your statement was that you never talked to anyone, or is to the effect that if you talked to someone that it didn't influence anyone?

Judge NIXON. Well, Senator, at the time that I testified before the grand jury, of course I didn't recall the March 11 matter, date, happenings. But, in hindsight, looking back, and even—it's my position that nothing that I said on that day influenced anyone. I certainly didn't know it did. If it did, it was without my knowledge. So when I tell you now that it didn't in my judgment and opinion, I think I'm correct. Because even taking Bud Holmes' testimony, considering it to be true, he stated that he said he was going to do—he would do something for Drew Fairchild, and I told him I didn't want to do anything. And when you tell someone that twice or more, as he testified, I think you can assume that you hadn't influenced anybody. I never knew about any case being passed to the files or anything else. I heard nothing more about that matter

from that day until Reid Weingarten and Ken White-Spunner came to see me on April 19, 1984.

Senator HEFLIN. Well——

Judge NIXON. Except, of course, what I read in the newspaper in the first part of 1983 about that matter.

Senator HEFLIN. Well, as I understand your testimony, it is to the effect that your recall mechanism wasn't working, and you did not recall——

Judge NIXON. Of course—excuse me, I'm sorry, Senator. That newspaper article predated that.

Senator HEFLIN. Well, at the time you testified before the grand jury, am I correct in stating this: That your recall mechanism did not recall a conversation with the State prosecutor, Bud Holmes; and that, therefore, your testimony before the grand jury was to the effect that you had not talked to the State prosecutor about the case?

Judge NIXON. Yes, Senator.

Senator HEFLIN. All right.

The CHAIRMAN. Thank you, Judge Nixon.

Judge NIXON. Yes, sir.

The CHAIRMAN. Does the House have any objection to the evidentiary proffers?

Mr. BARON. No objection.

The CHAIRMAN. They will be admitted.

[The documents referred to were marked as Respondent Exhibit Nos. 1 through 81 and were admitted into evidence.]

Mr. BARON. On behalf of the House, we would like to offer five items into evidence. First, as House exhibit 41, would be the stipulation of facts which I believe all the members of the committee have in their binders. I'd like to move that officially into evidence.

The CHAIRMAN. No objection. So ordered.

Mr. BARON. Second is House exhibit 42. We would like to move the admission of what's labeled "Public voucher for purchases and services other than personal." It relates to the phone records which Judge Nixon identified on cross-examination and which indicated that on May 14, 1982, a phone call was placed from Carroll Ingram's office and from the office of Bud Holmes late in the afternoon.

Mr. STEWART. No problem.

The CHAIRMAN. Without objection, it will be admitted.

Mr. BARON. We will have copies for Mr. Harvey for distribution of that item.

Item 43 is an affidavit of Robert Jackson. Just to characterize it generally, it would amount to what might be called a negative character witness in rebuttal to Judge Nixon's positive character witnesses that he put on. We did not want to take up the time of putting on a live witness for that purpose. The use of affidavits, indeed, in the exhibits that Mr. Stewart just put in, one of those is an affidavit of the judge's secretary. We believe that has been regarded as more or less acceptable in this kind of a proceeding, and we would request that the affidavit of Mr. Jackson be accepted as House exhibit 43.

House exhibit 44——

The CHAIRMAN. Just a minute. Any objection?

Mr. BRODY. Mr. Chairman, I do have an objection, very strong objection to this item.

The CHAIRMAN. Let me see the affidavit.

Mr. BRODY. It purports to be a character affidavit or character evidence, but, in fact, it is simply a narration of an incident which has nothing to do with this case, nothing to do with the Articles of Impeachment; it's totally collateral. It was given to us literally at the 11th hour with no opportunity to investigate it or deal with it in any meaningful way. In a court, you would not ever be able to put on character evidence by affidavit without an opportunity to cross-examine someone who is giving that kind of evidence. I just find——

The CHAIRMAN. I don't see any reason to put this in.

Mr. BARON. We won't press the point.

The CHAIRMAN. If he had been important to the case, you could have brought him so he could have been cross-examined. Overruled.

Mr. BARON. Items 44 and 45 are similar. There was testimony by Judge Nixon concerning his lack of awareness——

Mr. BRODY. Excuse me. I'm sorry. I don't mean to interrupt. Mr. Chairman, I don't mean to be telling the Chair what it should do, but if the item is going to be passed around on the panel, it's effectively been admitted.

The CHAIRMAN. I thank counsel. We didn't get to read the Style section this morning. [Laughter.]

Mr. BRODY. That was kind of my point.

The CHAIRMAN. I appreciate the counsel's help.

Mr. Baron.

Mr. BARON. Items 44 and 45, which the House proposes to admit into evidence, consist of first, an affidavit by James Carroll; and, second, an affidavit by George Morse. They were counsel for—well, let me back up. Judge Nixon testified that he did not—he was not aware that the Fairchild Construction Company was a party before him in those civil actions during the period of time that he had the transaction ongoing with Wiley Fairchild and Fairchild Construction. They were counsel in that case, the case of *Seymour v. L&A Contracting Company*, and both of them in their affidavits state facts, in essence, that Judge Nixon had to know that Fairchild Construction Company was a party to the case because they attended conferences with the judge. And it rebuts—it goes to the credibility of the judge's testimony.

I would note also that in the proceedings before the House affidavits from Mr. Morse were submitted by both sides which were accepted into evidence.

Mr. BRODY. Mr. Chairman, again, I have strong objections. Again, this item has nothing to do with the Article of Impeachment. And, in fact, this issue was fully explored in the House subcommittee, and no charges were brought by the House on this issue.

With respect to Mr. Baron's point that this goes to the credibility of Judge Nixon's testimony, I submit that the House had ample opportunity to cross-examine Judge Nixon and could have asked him about the substance of these affidavits and the attachments to the one affidavit. And they chose not to do that.

I believe that submitting an affidavit by a witness who we have no opportunity, again, to cross-examine is wholly improper in these proceedings. And, again, it relates to an issue that is completely beyond the scope of these proceedings. I see no reason to clutter the record and distract the panel and the full Senate from the Articles of Impeachment.

Mr. BARON. Mr. Chairman, I find it a little hard to understand how Judge Nixon's counsel can on the one hand state that it's inappropriate to submit an affidavit from a witness that they can't cross-examine, when about five minutes ago in this very room they submitted an affidavit from a witness who we can't cross-examine. I had no objection to it on the principle that we're not following the Federal Rules of Evidence here, but it seems to me what's sauce for the goose is sauce for the gander.

Mr. BRODY. Again, this was submitted to us at the very 11th hour. The affidavits that we have given have been provided to the House. These two affidavits were signed in March 1989. The House certainly knew it was going to have an issue of Judge Nixon's credibility. They could well have provided this to us long ago, with ample time to deal with it, perhaps get a counter-affidavit. I believe this is extremely unfair.

The CHAIRMAN. My recollection of Judge Nixon's testimony is that he had cases before him involving the Fairchild company, didn't realize it at the time because of the workload, but he acknowledged the fact that, in retrospect, he knew that there were—that there had been cases, he just didn't spot them at the time.

Mr. BRODY. That's correct, Mr. Chairman.

The CHAIRMAN. And, therefore, he did not recuse himself, with the exception of his testimony this morning on the recusal. I'm not going to put them in. I think the testimony speaks for itself. Sustained.

[House Exhibit Nos. 41 and 42 were marked and admitted into evidence.]

Mr. BARON. Thank you, Mr. Chairman. I believe that's all.

The CHAIRMAN. Closing statements from the House.

SUMMATION ON BEHALF OF THE HOUSE MANAGERS

Mr. EDWARDS. Mr. Chairman and members of the panel, on behalf of the managers from the House, we thank you for your courtesy and for your excellent attendance and for your careful attention to this matter.

The subcommittee has been living with this issue for more than a year. As a matter of fact, this is my fourth impeachment, and I might say that each and every one has been a tragic experience.

Right at the beginning, the subcommittee made up its mind that this was not a matter comparable to a grand jury, that we were not a grand jury, that impeachment is much more serious than a grand jury indictment, and that we must find more than probable cause. So we made up our mind that we would have what amounted to a trial in the House of Representatives in our hearings, with all of the witnesses subject not only to examination but to cross-examination, unlimited.

We had to be convinced that serious, very serious, misconduct took place.

Were we skeptical? Yes, we were very skeptical at the outset. The Subcommittee has had long experience with overzealous prosecutors. After all, this is the Subcommittee that held hearings on such matters as ABSCAM, COINTELPRO, and subjects like that. We allowed Judge Nixon's excellent attorneys unprecedented license to cross-examine witnesses. We kept the hearings going week after week, even after the majority of the subcommittee had indicated that it was ready to vote the impeachment.

We sent our lawyers down to Mississippi a number of times to run down every possible allegation, every possible witness that might be of some assistance to us. And of course, the Subcommittee had long conversations with the members.

I assure the panel, Mr. Chairman, that in the House the judge got due process.

But at the end, it got down to some key witnesses that you have heard, and you have examined them with great care and with great skill, in depth, searchingly—FBI agent Ken White-Spunner, Wiley Fairchild, Bud Holmes, Carroll Ingram, and perhaps the most important witness of all, Judge Nixon himself.

Judge Nixon is not the kind of a defendant who has shredded documents or left the scene of the crime, laundered money—not at all. He is a Federal judge for 20 years of excellent reputation.

But after all these hearings and exhaustive consultations with each other, the subcommittee voted unanimously to recommend impeachment to the House of Representatives.

Why did we do this? Because we became firmly convinced, unanimously, that Judge Nixon did not tell the truth to the grand jury and to the Federal investigators, and that these untruths constitute serious Federal crimes for any American and certainly for a Federal judge.

You have heard the same witnesses we heard, and you must decide if Judge Nixon lied to the grand jury and to the Federal investigators, because if he did, those are serious felonies, and he shouldn't be on the bench.

We drew the Articles very narrowly. We just alleged the 14 false statements. We think the prosecution witnesses proved that he made these 14 false statements, and we think that Judge Nixon's own testimony corroborated what the witnesses said.

So Mr. Chairman and members of the panel, the House of Representatives by unanimous vote recommends that the Senate remove Judge Nixon from the Federal bench.

Thank you.

The CHAIRMAN. Thank you very much, Congressman Edwards.

Mr. Sensenbrenner?

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman and members of the Committee.

I would also like to thank you for your time, diligence and effort in connection with this proceeding. It is apparent from your questions during the trial that you have taken the time to understand the evidence, and that is a tribute to this body and to the impeachment process required by the Constitution.

Judge Nixon is not here today because he was convicted by a jury. He is not here today because the Judicial Conference of the United States sent a certificate to the Speaker of the House of Representatives stating that Judge Nixon had engaged in conduct which might constitute grounds for impeachment.

He is here today because the House of Representatives exhaustively investigated the allegations and is unanimously convinced that Judge Nixon did the acts stated in the Articles of Impeachment.

You have before you, and we have on the counsel table, an extensive hearing record of the proceedings before the subcommittee on Civil and Constitutional Rights. I believe that this subcommittee and the House of Representatives got the message that the Senate sent to us in the Claiborne impeachment, and in this case did not do a summary proceeding, but convinced itself based upon its own independent investigation that Judge Nixon warranted impeachment.

Basically, there are two questions that the House and the Senate have to answer. The House has already answered both in the affirmative. The first is, does the conduct complained of constitute an impeachable offense. And the House of Representatives unanimously said that it did. And that is really not an issue here. Everyone agrees that if proven, this conduct is an impeachable offense.

The second is whether the conduct actually took place. Now, obviously, there are two versions of the events here—Judge Nixon's version of the blackmail meeting, his visit to the farm, and the phone call are certainly more benign than the collective picture painted by the other witnesses. For the collective testimony of Wiley Fairchild, Bud Holmes and Carroll Ingram is very damning to Judge Nixon.

If you believe these witnesses, the *Drew Fairchild* case was fixed as a result of Judge Nixon's involvement. If you believe these witnesses, Drew's case was passed to the files as a result of Judge Nixon's participation.

Wiley Fairchild, Bud Holmes and Carroll Ingram all admit their friendship for Judge Nixon. They express their high regard for him at every opportunity. They are three members of the bridge club, and the judge is the fourth.

But when asked under oath about the specific facts at issue, Holmes, Fairchild and Ingram describe Judge Nixon's active and knowing involvement in very serious misconduct. Through the good work of Judge Nixon, the Drew Fairchild drug smuggling case is passed to the files—no fine, no probation, no adverse consequences to Drew Fairchild of any kind, even though he has pled guilty and was admittedly involved in smuggling a planeload of marijuana into the United States.

And why does Judge Nixon become involved? Because he had received a very lucrative investment from Wiley Fairchild and wanted additional investments. How do we know? Because after his contacts with Holmes and Fairchild, Judge Nixon took credit for helping Drew when he spoke to Ingram about the investments. In order to enhance his business relationship with Wiley Fairchild, Judge Nixon was willing to become involved in the matter, to

Speak with Holmes as Fairchild wanted, and to put in a good word for Drew.

In considering the Articles of Impeachment, we in the House decided to tread very cautiously. We wanted to be as fair to Judge Nixon as we possibly could. So you need not choose between Judge Nixon's current version of the events and the collective testimony of the other participants. Even if you accept Judge Nixon's version completely, to the exclusion of all of the other testimony, you should vote to remove him from the bench, for when Judge Nixon was confronted and given full opportunity to describe his version of what happened, he repeatedly lied—first in his FBI interview; then later, in the grand jury—not once, not twice, but over and over again.

There is really no question that the statements charged in the Articles of Impeachment were false. The Federal investigators were trying to find out what Judge Nixon knew about the *Drew Fairchild* case, and of course, the blackmail meeting with Fairchild, the visit to the farm, and the telephone call to Fairchild were about the *Drew Fairchild* case. That fact is not disputed.

Judge Nixon's conversations with Wiley Fairchild and Bud Holmes, even if they occurred just as Judge Nixon described them to this Committee, were about the *Drew Fairchild* case. Everybody agrees.

In his opening statement, Mr. Stewart described Judge Nixon's meeting with Wiley Fairchild and said that Judge Nixon had no idea what Fairchild was talking about. But to quote Mr. Stewart: "It had something to do with Drew's case."

Senator Heflin asked that key question to Wiley Fairchild very pointedly, and I quote from the transcript:

Senator HEFLIN. In answer to Senator Danforth's question pertaining to your son's case and the blackmail, you in effect said when you discussed blackmail that you were discussing your son's case, the equivalent of it. In other words, there was nothing other than your son's case that could have been involved in an attempt to blackmail you. Is that your testimony?

Mr. FAIRCHILD. Well, there was nothing else but Drew's case. Of course, I just thought it was blackmail, and I didn't ask the judge to do something about it. I just told him that Bud Holmes wasn't treating me right, and if he was, he would go ahead and prosecute Bob Royals.

Senator HEFLIN. All right. So, was there any way that you could discuss the blackmail without mentioning your son's case?

Mr. Fairchild. I don't see how I could have and got the point over.

Bud Holmes stated that he and the judge talked about the case. Judge Nixon himself admits that the complaint of blackmail involved the handling of the case; and by stipulation, the judge conceded that Fairchild thanked him for speaking with Holmes about the handling of the case.

Given this simple fact, that Judge Nixon indeed had contact with Holmes and Fairchild about the *Drew Fairchild* case, what were we to make of the 14 statements at issue in the Articles of Impeachment?

I urge you to go back to House exhibit 3. We have highlighted the key statements for you. Read them over again one after the other. Judge Nixon told the interviewers in the grand jury that he never discussed with Wiley Fairchild anything about his son's case. Wiley never brought up his son's case. He didn't even know Drew

existed, except what he read in the newspaper. Nothing was ever mentioned about Wiley's son. He never heard about the case. Holmes never talked to him about the case. He never discussed the case with Holmes. He knew of no reason why he would have met with Wiley after the transaction was finalized. He had nothing whatsoever unofficially to do with the case. He never had a thing to do with the case at all. He never talked to anyone including the State prosecutor about the case.

Now, what are we to make of these categorical denials from a man whom everybody agrees is cautious and who chooses his words carefully?

It is still difficult to figure out exactly what Judge Nixon's defense is. In the House proceedings and at his criminal trial, Judge Nixon admitted he was aware of his contacts with Fairchild and Holmes at the time of the interview and at the time of his grand jury testimony. Judge Nixon admitted that he remembered. Look at House exhibit 26, Excerpt Number 2.

However, before this committee, Judge Nixon reversed his position. He now principally claims he simply forgot about the events at the time of his interview and the grand jury testimony. This reversal of position is remarkable, and it makes no sense.

Put yourself in Judge Nixon's shoes. You are interviewed for over an hour, questioned repeatedly about your contact with Holmes and Fairchild. You have never been angrier. You call up Holmes and Ingram the same evening. Over three months, the investigation is constantly in the press and constantly on your mind. You search your files for documents, meet with counsel, read the interview transcript, carefully prepare written closing arguments in anticipation of your grand jury testimony, and then you testify in the grand jury. Again you are questioned. Can you really believe that over this entire period, Judge Nixon forgot about these events—events which he remembers so clearly in his testimony; events which he admits gave him feelings of shock, disbelief, embarrassment and discomfort? I don't think so.

And once Judge Nixon remembered the events and realized the Government was interested in him, did he come forward to clear the record? No, he didn't.

And when you start to probe his claim that the events just didn't trigger in his mind, the color of Judge Nixon's defense changes like a chameleon.

Judge Nixon grudgingly admits that several of the statements at issue here are false. He admits Drew Fairchild was mentioned. He admits he knew Drew Fairchild existed. He admits he heard about the case. And yet Judge Nixon still attempts to argue that some of the statements are true under a very narrow reading of language. He rests his defense on supposed differences between "discuss" and "talk"; between blackmail in connection with Drew's case and the case itself; on subtleties like the meaning of the phrase "dealing with Wiley Fairchild".

If this impeachment involved just one or two statements, such semantic defenses might be persuasive—but not as to 14 statements. The 14 statements alleged in the Articles of Impeachment show the transparency of Judge Nixon's linguistic arguments. And when Judge Nixon is asked closely about these semantic arguments, his

defense changes color again. He blames the prosecutors. Yet the questions he was asked were reasonable and fair. The problem is not with the questions; it is with Judge Nixon's answers.

Why blame the prosecution if you simply forgot about the events at the time you were questioned?

Whatever his defense, it is simply impossible to reconcile Judge Nixon's own current version with those repeated denials in the interview and the grand jury. This is no testimonial mishap. Rather, Judge Nixon's interview and grand jury statements are the statements of a man who doth protest too much.

The 14 false statements taken together conclusively establish Judge Nixon's intent to deceive the interviewers and the grand jury. There never is a good reason to lie. But whether you believe Judge Nixon's benign version of the events or the collective testimony of Holmes, Fairchild and Ingram, there is ample evidence of what was going on in Judge Nixon's mind. Whether he was simply embarrassed about an uncomfortable situation or whether he recognized his participation in helping fix the *Drew Fairchild* case, he repeatedly denied any involvement to get the investigation off his back.

Not surprisingly, Holmes and Fairchild did the same. It was only through indictment and prosecution that the truth was revealed.

A Federal judge must make important decisions on credibility. He is called upon to seek the truth in matters that come before him. The evidence shows Judge Nixon is unfit to carry on this task. His conduct is totally unacceptable for a Federal judge and has tainted the integrity of the Federal judiciary.

I believe that when you thoroughly review the evidence carefully, you will agree that Judge Nixon must be removed from the bench.

Thank you.

The CHAIRMAN. Thank you, Mr. Sensenbrenner.

Is there anyone else for the House?

Mr. EDWARDS. No, Mr. Chairman.

The CHAIRMAN. Mr. Stewart.

SUMMATION ON BEHALF OF THE RESPONDENT

Mr. STEWART. Mr. Chairman and members of this Committee, I am troubled by some of Congressman Sensenbrenner's remarks. I am troubled—in part, I cannot figure out what their position is. First, they tell us that they were just dispassionate decisionmakers. Then they try to scare you and say Judge Nixon tried to fix Drew Fairchild's case. He did not try to fix it. You know that. We know that. They did not even accuse us of that.

Then he takes the quotes out of context again and again and again. I want to make clear here, I am used to having an adversary. That is what my job involves. This is an adversary proceeding. They are our adversary. And they are still trying to distract you. They are still trying to distract you from looking at the whole case. And that is what I hope to do here today. I probably won't match the House managers for brevity. Again, it has been a failing of mine. But I do want to review some of these matters and try to get them clear.

At the outset, though, I want to emphasize that there is something circular and there is something self-justifying about a perjury charge. Once you go to the trouble of charging someone with perjury, then by definition the fact that he may not have recalled it at the time must have been important, because if it was not important, you would not have charged him with perjury over it. But that is not the case here. You have got to break into that circle.

I had a professor once who said the strongest argument was always the circular one, because you could not break into it. That is what you get here. Why would there be a perjury charge if it was not important?

But you have got to step back and look at what was going on in everyone's life. And I am going to address this again. None of the Government's witnesses remembered this call, these conversations, when they went to the grand jury the first time. It was not important to them. They all knew that the grand jury was investigating Drew Fairchild's case. It did not come up in their minds. It did not come up in Judge Nixon's mind either. Nothing remarkable about that at all.

There is a key phrase also I want to mention at the outset. Judge Nixon mentioned it in his testimony yesterday. He is in essence accused here of having lied to conceal his innocence. That makes no sense. It did not happen.

To try to frame what I am going to talk about, there are two points you have to decide, two separate and independent findings. You have got to find both against us to vote for these impeachment articles.

The first is that the statements involved were not true. They were inaccurate. They were just wrong. The words on the page are inaccurate or wrong. When you read the statements charged here and you apply the evidence that has been educed, you are going to find that those statements were, in fact, true.

It does not matter if Judge Nixon thought he was ordering dinner in Hebrew. It does not matter what he thought he was saying, as long as those words come out and you read those words, and they are true. And that is what you are going to find on these assertions, on these charges.

And the testimony of the fact witnesses other than Judge Nixon are particularly important, because there is no sufficient evidence in the record to convict on those Articles of Impeachment, even if you believe every word of what Mr. Holmes and Mr. Fairchild said.

Second, you are going to have to find—and this is a second point you have to find—it is charged that he knowingly gave false testimony. You are going to have to find that he intentionally did it. It was not an inadvertent statement. This is where Judge Nixon's testimony is of particular relevance, because he has simply and plainly explained what was in his mind; why he volunteered to go to the grand jury; why he was willing to have his conversation—interview—with the FBI taped, and how it just did not come up for him as it did not for the other witnesses.

Those are the two issues. But I also want to flag a third one, which is relevant, really, to both of them. And Senator Reid has questioned about it, which is whether the statements themselves

are simply material. That question is going to suffuse everything you think about.

None of the House managers' witnesses said that this was an important event. None of them remembered it when they went to the grand jury. Wiley Fairchild lay awake nights before he came up with this. He was told, "You need a smoking gun on Judge Nixon." And he lay awake nights. That is a chilling thought, to have somebody laying awake nights, thinking up things to say about you. And finally, he came up with it. And finally, nothing involved here—in my introduction—nothing involved here was illegal.

If Judge Nixon had recalled those conversations and had told the FBI about it, had told the grand jury about it, there would have been no charges brought based on it. There would have been no charges against him or anybody else. The underlying events were unobjectionable.

I want to start out with a few observations about the credibility of the witnesses, since credibility is an important part of this case. I want to take kind of an example, to look at one subject which has been the subject of testimony throughout this matter, which is the date of the phone call.

Now, Senator Wirth asked a good question about that yesterday. Does this really matter? And I think the answer really is, not a whole lot. No. We are not pinning our case on the date of the phone call by any means. But I do want to review this with some care, because I think it gives some insight into how these witnesses came up with their testimony, how they were pressed. I also think it helps frame the verdict because, of course, this was told to the jury at trial, "Hey, this is the issue on which we stake our case." The convictions were based on it.

Now, the House has told you two things: They told you the phone call happened on May 14, 1982, and they told you it happened on December 1, 1982. That is their testimony, both dates.

Let's take the first one, May 14, 1982. Now, Bud Holmes gave that testimony. When he testified before the grand jury the third time, he was asked about the phone call. And he said it was in 1982 or 1983, in the Spring. After he made his deal, he went back, looked at his calendar, picked out May 14 and said, "That is the day. Now I know."

Then they brought in that last-minute phone record yesterday that Mr. Cardin pulled out of his pocket to dazzle you, get you all excited about that, showing that Judge Nixon was in Hattiesburg on May 14. We knew that. That was covered in Judge Nixon's direct examination. We just say that was not the date of these conversations. It is a distraction.

But let us step back and think about this May date. What is happening in Drew Fairchild's case? Wiley Fairchild has testified that he talked to Judge Nixon at the time because he was upset about the case. Something was happening. Something was bothering him about the case. There was publicity, and he hated that publicity. And the publicity pointed at him now.

Well, in May 1982, Drew Fairchild is recuperating from back surgery, and there are continuances after continuances in his case. There is no press. We went and looked. We went and looked for the press. There is no press. Nothing.

What did he have to complain about then? Nothing. But the date itself also does not fit in the context of Mr. Holmes' testimony, this May 14 date that he gives. He says that seven months later, he passed the case to the files. Now, that is just hard to swallow on its face. That is a long time to wait to make good on a promise to the richest man in Hattiesburg, a promise that Mr. Fairchild, of course, does not remember, does not think was ever made.

Indeed, the four other witnesses in this case who have tried to date the phone call—none of them think it was in May 1982. Wiley Fairchild has had a revelation here in this proceeding. He now says it is December 1, and I will come to that.

Rodney Fairchild, we submitted his affidavit. He associates it with the publicity about passing the case to the files. And he is a little waffly about it. He says it was either before or after, but it was connected to that somehow.

Carroll Ingram has testified that he thought it was in late 1982, but it could have been three or four months either way. He cannot be positive.

Judge Nixon's given you his best recollection, that it was in March 1983. None of them is anywhere close to May 1982. That is a four against one.

OK now, let us look at December 1, 1982. That is Mr. Fairchild's testimony. Now, this was interesting testimony; because Mr. Fairchild has testified five times in this case. He went to the grand jury twice. He testified at trial. He testified at the post-conviction hearing in Jackson last year. He testified before the House subcommittee last year. And he never said December 1 was the date. Never.

Seven years after the event, in this proceeding, he has had his epiphany, and it is now December 1. It is incredible that they march in here with that telephone slip and try to pass that one over on you; try to slip it by you. We ran through those records this weekend. I just submitted them this morning. Judge Nixon was not in his office on December 1 when that phone call supposedly came in. Ms. Watkins went through all of her phone records. No message was left for Judge Nixon on that day from Mr. Fairchild. It is her belief, based on what she was doing that day, trying to assemble financial information, that the phone call was for her from an administrative person.

And Mr. Fairchild, of course, said the phone call was triggered somehow by a visit from Bob Royals. Mr. Royals was Drew's partner at the airport. Mr. Royals had just come back from visiting Joe Krohn, a friend of his, from Maxwell Air Force Base. Now, that part of the story has never fit, and it does not fit here either; because Joe Krohn had been released from that prison five months before December 1, 1982.

So that is the second house of cards they have built for you, and the second one that collapses of its own weight. You cannot buy either of those stories. They do not work.

Now, Judge Nixon has attempted to place this phone call. And he has given you his best recollection it is March 11, 1983. And there is good objective evidence to support that. There is the publicity. There is no question that the publicity happened in January 1983; no dispute on that. That is after the case goes to the files.

That is when the roof falls in on Bud Holmes. That is when we have got his videotape. That is when it happens.

There is another point here—and maybe it is a little subtle, and because I have lived with the case so long, it means a lot to me—but I want to explain it. Mr. Fairchild has always said that he told Judge Nixon that Carroll Ingram might be in on it, too, on this blackmailing. Well, Carroll Ingram did not have anything to do with the *Drew Fairchild* case until the case went to the files. Then the case goes to the files. Bud Holmes gives him the order and Carroll Ingram delivers that order to Wiley Fairchild. And Wiley Fairchild has testified that that made him suspicious about Carroll.

So if he is telling that to Judge Nixon, it had to be after then. If he is telling Judge Nixon Carroll Ingram may be in on it, you have got to get Carroll Ingram into the picture somehow. And he does not come into the picture until the case is passed to the files.

Then by serendipity we got the FBI's exhibits back. These were not available to us at trial. And we found a phone message from Bud Holmes to Judge Nixon on March 11, 1983. It is exhibit 17 in our materials. Again, it is like their messages. It does not say exactly, "This was the phone call." But it is corroboration, and important corroboration.

And what I want to emphasize here is that Judge Nixon's recollection makes sense. It hangs together. But I also quickly want to run through just a hard look at the credibility issues with these witnesses. Of course, there is going to be some differences in recollection among a number of witnesses trying to remember events a long time ago.

But I think there are some extra factors in here which you are going to have to account for. Bud Holmes—Judge Nixon stole my line on this—but every time he went to the grand jury, he said something that got him indicted. And I asked him about that here and he said, "No, those were not to protect Judge Nixon. No, I was not protecting Judge Nixon." And he is upset about those indictments. He says there is nothing to them.

But he stuck his head in the noose every time he went to the grand jury. Mr. Holmes also concedes that he indicted Drew Fairchild to help Bill Porter collect a fee. That is a tough thing to swallow. That is a hard thing to realize about somebody. And he sat here and fessed up to it.

But there is also something funny about this case. If you look at exhibit 69 in our materials, those are materials from the DA's files down in Hattiesburg. And Katie Matison, who was the Assistant DA who worked for Bud Holmes, testified about this at her trial—at Judge Nixon's trial, excuse me. It was at pages 1,336 and 1,337 of the trial transcript.

They had evidence against Bob Royals. Ms. Matison did a list of 10 suspects; four of whom the Federal Government had prosecuted. Bob Royals was the second name. And we attached a summary of a proffer of testimony by a cooperating witness where Bob Royals is mentioned three or four times. But Ms. Matison says that she gave that list to Bud Holmes and he said, "Let's prosecute Drew Fairchild and Watkins." Skipped right over Mr. Royals who, it happens, worked as a pilot for him.

There is something though that we also explored here a bit during the hearings about Mr. Holmes, and that was he was running around Hattiesburg during this investigation doing some very questionable things. He asked Carroll Ingram if Wiley had taped the phone call from the farm, and he tries to palm that one off on Judge Nixon. He has got the dates wrong. Carroll Ingram says that was after the grand jury appearance. Mr. Holmes says, "No, it was before."

He goes and asks Karl Kepper, who is Wiley Fairchild's lawyer—he says to Mr. Kepper—"Have they asked Wiley about the phone call? Has Wiley said anything about the phone call?"

Then in February 1985, Mr. Holmes really starts to get a little erratic. He visits Carroll Ingram. You saw Carroll Ingram. He came across, I think, as a man of integrity. He tried to tell that man, "You don't really remember that phone call; do you? I mean, you are probably wrong about that."

Mr. Ingram sent him on his way. And then there is trial testimony by Ms. Matison again that at exactly the same time Mr. Holmes came to her, and he said to Ms. Matison, "This *Drew Fairchild* case, that was your case; wasn't it? It was not my case. I did not have anything to do with it. I mean, you made all the decisions. I didn't have responsibility for any of this."

And she said, "No, you were the boss."

And she said he got irate, started berating her, calling her an ingrate. And then when he gets indicted and he is going to trial, he has to make a deal with the Federal Government. He really doesn't know anything bad about Judge Nixon. I will stipulate to that. He really does not. He said that here. But he has got to try to improve the story a bit. He has got to get something to sell. And he starts trying to lay off some of this questionable behavior on Judge Nixon.

So all of a sudden, it is Judge Nixon who asked if the phone call was taped. All of a sudden, it is Judge Nixon—when he goes to see Judge Nixon in February—he tells Carroll Ingram—he tries to change Carroll Ingram's story. There is no phone call. He tries to change Katie Matison's story. "It was your case. It was not my case."

But he says Judge Nixon tried to change his story about the phone call. Now, that does not wash. We know what is happening in February. Bud is running around trying to tamper with witnesses. And he tried to do it with Judge Nixon. And Judge Nixon said to him, "Bud, I am going to tell the truth. There was a phone call, and you made it."

And when he goes to the grand jury—this is amazing—Bud Holmes tells them, "Yes, Judge Nixon remembers the phone call." So you have got Bud Holmes testifying against himself again, because now he says, "No, when I told the grand jury that, I was lying, and Judge Nixon really didn't confirm the phone call."

Gentlemen, I do not think I could lay that out for you again, it is so complicated. He has got himself tied up like a pretzel.

Look at what Judge Nixon did. The one time he wanted to—when he first is interviewed by the FBI and he wants to reach out to a couple of people he knows, to Carroll Ingram and Bud Holmes, and George Phillips, the U.S. Attorney, and find out what is going

on—he says to the prosecutor, “I am going to call these people. I do not want you to feel like I am doing something wrong. I am not doing anything surreptitious. But I am upset, and I am going to call these people.” Is that the guy who is going to deny the phone call to Bud Holmes? I just do not think you can buy that.

Then there is the videotape we showed of Mr. Holmes. Mr. Holmes explained on the videotape about passing the case to the files. He says he passed it to the files, on the videotape, because Drew’s lawyer, Mr. Porter, was complaining about it because of the 270-day rule, under Mississippi law, requires trial within 270 days of indictment.

And I asked if what he said on the tape was true; and he said, “Yes, it was.” Then he got that sly look, and he said, “Except, of course, I left out the fact that Judge Nixon had talked to me, and I made the promise to Wiley Fairchild.” And we all had a good chuckle over that.

That episode leaves me with a basic problem. I think he was telling us that he was lying on the tape. He was not telling the truth. How could you tell the difference? His ears did not turn purple. His hair didn’t stand on end. He did not hiccup. It was just Bud Holmes talking. How are you going to sort that out?

And then when I confronted him with three squarely inconsistent statements—two in the House hearing; one here at the end of the cross examination—and I asked which one was true, he said, “You can use any one you want.”

Well, that may just sum up Mr. Holmes’ attitude right now. Mr. Holmes is trying to avoid a perjury indictment any way he can. And that is all he cares about now. And I think the truth, if he ever cared about it, is real low on his priorities.

And then there is Mr. Fairchild. I don’t know quite what to say about Mr. Fairchild. Sometimes I feel like maybe he is just a little bit pathetic, the way he presents himself. He has lost a few steps, and we ought to be indulgent of him.

Other times, I think that is what he wants us to think. And that is how he is setting us up. But I think we all agree, after hearing him, he is a difficult man to understand. I want to lay out, though, just a couple of points about him.

At his second grand jury appearance in November 1984, Mr. Fairchild said that he had given false testimony during his first grand jury appearance. That is at exhibit 41A, pages 6 and 7. When he testified at trial, he said he had lied to the FBI when he was first interviewed. His trial testimony concerning the phone call from the farm was directly contrary to what he had told Karl Kepper, his lawyer, and John Baltar, who was his assistant. He had told those two men that Bud Holmes made the call; but he told the jury at trial Judge Nixon did.

At the post-conviction hearing in Jackson last August, he said that based on those scripts that had been prepared for him at Judge Nixon’s trial—in that elaborate system of scripts; it is exhibits 37 and 59—he had learned to give testimony that the prosecutor wanted, and that testimony was not true.

And then he came here last Thursday and said that he has always told the truth. Always. Hard to know what to do with that. But that is a tough witness to hang much of a case on.

Then there is Mr. Ingram. And I have been frank about Mr. Ingram. I think he is a credible witness. He was not squarely involved in the most important matters at issue here. It is kind of a shame. He is somebody you might be able to rely on pretty well.

But there are some facts I do think, out of all this mess—and I think I predicted at the beginning that it was going to be a little bit frustrating trying to sort out the facts. There are a few you can grab onto. There was a conversation between Judge Nixon and Wiley Fairchild, and that conversation concerned Mr. Fairchild's blackmail allegations, his suspicions.

Now, whether Mr. Fairchild may have hoped in part to convey a concern about unequal justice to Bob Royals and to Drew, which was testimony elicited by some pretty sharp questioning by Senators Heflin and Fowler, the basic message he conveyed has always been it was blackmail. That is what he was telling Judge Nixon about. And those blackmail allegations have never been entirely coherent. And I think, having sat through Mr. Fairchild's testimony, you can understand how he can give an unclear message, how you could walk out of a meeting with Mr. Fairchild not entirely sure what you had been told.

You also know that Judge Nixon said something to Bud Holmes about what Mr. Fairchild had said to him. Mr. Holmes says that Judge Nixon said that Wiley asked him to put in a good word for his boy. Now, it does not make much sense to pass on a message that was not given to him. I do not see how you would believe that.

But Mr. Holmes says he also offered to pass the case to the files. Mr. Fairchild does not remember that. Judge Nixon does not remember that. No corroboration for that. In fact, when Mr. Holmes was interviewed by the FBI, right after he made his plea deal—this is exhibit 54 of our materials—he is interviewed by the FBI. He has made his deal. He has got to go in and tell them everything. We call it an immunity bath in the trade. He has got to tell them everything to make good his cooperation.

He left out the part about offering to pass the case to the files. It is not there. That part improved. He picked that up later. The final fact is that there is no basis for concluding these conversations had any real impact on the *Drew Fairchild* case. And I do take exception to the loose language used by the House managers, that the case was fixed. There is a logical explanation for why Bud Holmes did this illogical thing, passing the case to the files, because his pal, Bill Porter, for whom he indicted Drew to collect 10,000 bucks, came again and said, "Do something, please." He asked him to dismiss it. That is the testimony. Mr. Holmes was only willing to try to pass it to the files.

Mr. Holmes' testimony that he was making good on a promise seven months before strains common sense. And surely if the phone call happened in March 1983, as Judge Nixon recalls, it could have had no effect on Mr. Fairchild's case.

There is a question alluded to here—and actually, the House managers have tried to take advantage of this—a worry that maybe credibility determinations ought to be resolved in favor of the jury verdict. What they told you here this morning is, "Hey, we heard the evidence and we concluded against him, so, you know, you really ought to take our word for it." You know, as a constitu-

tional matter, that is no good or else we would not have been here the last four days. But as a practical matter, too, when you look at the trial—and I am just going to reel them off—there are elements that make that verdict questionable, including the gratuity charge.

Carroll Ingram said he was the measuring stick. He said there was nothing wrong with it. If he is the measuring stick, why is it in there? He is the guy who broke the gratuity charge. He was the defense witness on that issue. He was a defense witness here, mostly. Why do you go with the charge? Of course, to play for a compromise verdict.

And Senator Chafee asked a pretty good question here. He asked, "How could this issue go to the jury? How could that bad charge go to the jury?" And he is skeptical. But plenty of judges do that with a bad count. If they have got a bad count, they send it to the jury. They hope the jury won't convict on it. Then they do not have to worry about it. They reserve judgment on the issue. And that is what the judge did here. It is not a course I admire, but it happens all the time.

Also, Mr. Fairchild's testimony was scripted. He said last year it was false. This year, I asked him about it and he cannot remember a thing that happened. I do not know what to do about all that. But I am pretty comfortable that his trial testimony is unreliable.

The jury was distracted onto side issues, kind of like they tried to do here today. And I want to get away from those now, and I want to look right at the heart of the case. Those are two arguments here. And I have said them at the outset: One, that those statements are true; two, that even if you do not think they are true, clearly Judge Nixon was not trying to tell a lie. He was giving the best testimony he could.

On literal truth, Article I alleges that Bud Holmes had actually discussed the *Drew Fairchild* case with Judge Nixon. What did the witnesses say? What did the prosecution witnesses say here? In response to a question from Senator Danforth, Bud Holmes said that his exchange with Judge Nixon might or might not have been a discussion. It depends on what you think about the word.

Mr. Ingram, also in response to a question by Senator Danforth, said that his telephone exchange with Judge Nixon was not a discussion of the *Drew Fairchild* case. That is what he told the grand jury when he was before the grand jury. And that is what he told the Senate in this hearing. He is walking around a free man. He was never prosecuted.

Wiley Fairchild said that he had no discussion of the case with Judge Nixon. That is what he told the grand jury. He was never prosecuted. He is walking around a free man. He was never prosecuted on that, I should correct myself.

Now, if none of the House witnesses can tell you that they had a discussion of Drew Fairchild's case, then he did not have a discussion with them. I mean, how can you support this proposition? You cannot adopt the double standard that the House is trying to retail to you. "Do not worry that our witnesses don't think they had a discussion or they are not sure whether they had a discussion or not. Don't worry about what our witnesses say. Believe us."

Well, Judge Nixon is entitled to the same standard that is applied to their witnesses.

And I do not want to lose sight of one final point on this. It is one of the points on which Judge Nixon and Mr. Holmes agree, which is that when Mr. Holmes offered to tell him about the case, Judge Nixon said, "I do not want to hear about it." Stopped him. And Mr. Holmes did not tell him about it. That is undisputed.

How, in good conscience, can you impeach a man—how can you send him into ignominious history—on the claim that he discussed the case, had discussed the matter, when the undisputed evidence is, when the matter was raised, he said, "I do not want to talk about it"?

Article II, the allegation is that Judge Nixon "never handled any part of it, never had a thing to do with it at all"—this was his statement, excuse me—"never talked to anyone, State or Federal, prosecutor or judge, that in any way influenced anybody."

Now, there are two parts to that, really: First, that he "never handled any part of it, never had a thing to do with it at all." Now here, they have cut this adrift from the context. You are going to have to look at the whole testimony. Do not look at the Articles of Impeachment, because they will trick you with that. Look at the testimony.

He testified that he thought maybe Judge Cox handled it. He thought maybe Judge Russell handled it. But I did not handle it. I didn't have a thing to do with it at all. That is what he was saying. He did not handle the case. And if they were going to be fair about it, that is how they would have charged it. He didn't handle the case in court.

Then there is the second part of it: He "never talked to anybody, State or Federal, prosecutor or judge, that in any way influenced anybody." That is the transcript we corrected. We got this far. It was yesterday. And we kept at them and said, "No, that is wrong. You have got it charged wrong. Four hundred seventeen House members have voted on a wrong statement." And they finally did go and listen, and they agreed we were right.

On this one, I will take Bud Holmes' testimony verbatim as true. Mr. Holmes says he told Judge Nixon that Drew had a deal all worked out. Mr. Holmes says that Judge Nixon asked if it was okay for Judge Nixon to tell Wiley Fairchild about the deal. That is why the phone call was made, according to Bud Holmes, to tell Wiley Fairchild about the deal.

So even according to Mr. Holmes, the phone call was made to tell Wiley about something that has already happened, not that the case will be passed to the files. Mr. Holmes says he volunteered that. He is just a happy-go-lucky kind of guy and he just said it, blurted it out. But he admits he has no idea if Judge Nixon heard him say that. Judge Nixon never heard him say it. Of course, Wiley Fairchild never heard him say it either.

So the only evidence you have got—this is all the bad evidence against us on this one—the only evidence you have got is that Judge Nixon hands the phone to Bud Holmes and when he does that, he is secure in his belief that the only thing that has happened is that Wiley Fairchild has been told his son has got a plea deal. So that statement in Article II—he did not speak to anyone that in any way influenced them—is true. In his mind, it has to be true. He is unaware of it.

I realize it may be tough for you. I am arguing two issues simultaneously. I am saying that the statements are true. Of course, he didn't remember them at the time. I need to make that distinction with you, though. If the statements are true, even if he did not think of the phone call at the time, if they are true on their face, you do not even get to the second question. If he inadvertently happened to utter true words, you do not worry about what was in his head.

Then there is Article III. I think you know my feelings about Article III. I talked about that a lot at our pre-trial argument. It is a sprawling, omnibus, unfair article. It is designed to be unfair. The statements alleged in it, though, are true—statements that are alleged to be false are actually true.

First, there are the charges based on the interview. He was not charged with any crime connected with this by the grand jury, by the prosecutors. And there is a good reason for that when you think about it—because he was caught cold. It is real hard to believe that he sat there—comes out of court or wherever he was—he walks in with these two agents and, all of a sudden, he is coming up with calculated answers.

There were some hard questions asked by the panel yesterday about how at the grand jury you have had this issue before you for three months, didn't it come up in your mind? Those are hard questions. I am going to address them in the grand jury. But in that interview, you have got no reason to question that that is his best recollection at the time. There is no external evidence. There is nothing there to assume that he is prevaricating, dodging the issue.

(A) and (B) in Article III(1)—this is a little tedious; it starts to sound a little like an outline; but I have got to do it; I want to make these points to you—that Judge Nixon never discussed with Wiley Fairchild anything about Wiley's son's case and that Wiley never brought up his son's case.

Judge Nixon was acquitted on a very similar allegation at his criminal trial. That was Count II in the criminal trial. Mr. Fairchild has testified here they did not discuss the son's case. They discussed the blackmail allegations. Sure, the blackmail allegations are connected to the son's case; but the question here is, "Is that a true answer or is it a false answer?"

Even Agent White-Spunner—and this was in response to a question from Senator Mack—conceded that Judge Nixon might well reasonably have made the distinction between discussing the case itself and discussing the blackmail allegation. He said that is possible.

The next allegations are (C) and (E), that Judge Nixon did not know that Drew Fairchild existed, except for what he read in newspapers and what the investigators had told him. That statement, when he is caught at the spur of the moment, you really do not have any reason to question that. The circumstances just do not support a notion there that there is something false.

The allegation (D), that nothing was done or nothing was ever said about Wiley Fairchild's son, they have taken this one out of context again. In context, he was being questioned about the time of his investment, when the transaction was being arranged. That

is what his answer refers to when you read it on the page. There is no evidence that Drew Fairchild's name ever came up at the time they were discussing and then consummated the investment. The statement is literally true.

Allegations (F) and (G) duplicate I and II. I am not going to rehearse that again.

Then their second batch of allegations in Article III, they relate to the grand jury testimony. Five of those allegations simply, again, rehearse Articles I and II. I think they are in there now three times.

Judge Nixon—there is (B), though—let me talk about III(2)(B). Judge Nixon did not know of any reason why he would have met with Wiley Fairchild after the investment. They start—they are cropping the quotation here again. You are going to have to look at the transcript to get the real story here again.

If you look at the transcript, he added, "But I cannot say for sure. It is possible." That is a tough question to indict somebody on—a tough answer—I am not sure. Even taken literally, the question is, "Did he know of any reason he had to talk to Wiley Fairchild?" It focuses on, "Did he have an agenda? Was there an appointment? Was there a meeting?" And there is not testimony of that sort. Taken on its own terms, it is literally true.

Then there is (C), that he gave the grand jury all he had and all that he could, and had withheld nothing during his grand jury testimony. That is not what his testimony was. You will have to look at the transcript again to find out what his testimony was.

His testimony, at pages 75 and 76, was, "I am happy to cooperate with this grand jury and give them all the information that I have and that I could." These are subtle changes. I will be candid with you, they are lawyers' changes they are making there. They are taking out the qualifiers. They are taking out the statements where he says, "I am happy to cooperate." And they say, "No, he said he had cooperated." It is a different statement.

If you are going to impeach the man, you have got to impeach him on what he actually said, not on some slanged-up version that has been put together to try to make it easy. The actual testimony is true. There is no indication—he volunteered to go to the grand jury—there is no indication that he was not happy to cooperate in every way possible.

The remaining allegations chop up the statements that have been alleged in Article II. I am not going to try your patience by going through every one. But I encourage you, on all of those, look at the testimony. Do not buy it the way the House managers have written it, because that is not how he said it.

I have to tell you—and if I am being too angry, I apologize—I worked a long time on this case and I feel deeply about it. These provisions are not worthy of the House. I will fight Articles I and II. I do not mind fighting those. But Article III is not worthy of the House and it is not worthy of the Senate.

The second issue, though, or second point here, is Judge Nixon's recollection of these events. Every allegation, all 14 of them, is really a claim that the statement was false because Judge Nixon did not mention the conversations in March 1983.

He has told you that when he was interviewed by the FBI, and when he went to the grand jury, the phone call did not come to mind. He did not testify and he has never said that he had completely forgot about it.

He makes a scrupulous distinction here that the House managers try to have some sport with. They try to make it seem like he is changing his story, but he has really been very scrupulous about it because he does remember that phone call now, he does remember that conversation with Wiley, and he's not going to tell you, "Hey, I forgot about it completely; it just left my mind." It was in there somewhere. That's what he told the House in the transcript at page 506. That is what he told the trial. "I was aware of it somehow, yes." And he has made clear here that it didn't come to mind.

He can't tell you exactly why it didn't come to mind. It is like why didn't you remember where your car keys were? You don't know why you didn't remember where they were; you just don't remember.

To claim now that his very scrupulousness on this point is contradictory. I think, is disingenuous and unfair.

Now, I do want to address this point I alluded to before that several Senators—I think Senators Kohl and Danforth that I recall, and maybe others—have wrestled a bit, and they have been candid in their questioning, that they are not sure how in that time frame from the interview in April to the grand jury in July—how could it have not come to mind. And that is a fair question. I want to address it very directly. I want to cite a whole bunch of factors that you need to consider.

As I just explained with the car keys, I can't tell you exactly, but I can tell you why you should believe that, why it is credible.

First—and it is clear on the face of the transcript of the interview—Judge Nixon's recollection was channelled very aggressively by the interviewers. If you look at pages 28 and 29, page 32, page 43 of that transcript, they are telling him that the issue is how did the case get from Federal hands to Bud Holmes, and he has focused on that. He is asking questions about that. He is concerned about that. And he has told you why. He knew if it was a Federal problem, he is a Federal official, "Maybe that's what they're after me about."

Agent White-Spunner agreed, Judge Nixon was focused on that problem, you bet. They also tell him it is in connection with the oil and gas interests, and if there was some connection between that and Drew's case. And he knew that there was no problem with that. He knew that that was false. And that's hits the press, and he's got that firmly in mind, and he is self-righteous about it, absolutely. You read that grand jury testimony; he is on his high horse about it, and he is angry.

So that is where his mind was. And it sure would have been better if he had lain awake nights like Wiley Fairchild, and it had come up to him, but that is where his mind was.

Second, he had no motive to lie. I think even Mr. Sensenbrenner has conceded that; he can't really come up with one. That is critical. There is nothing wrong or illegal or improper about what went on here. He was totally forthcoming.

And here, I want to address directly—because I know Senator Jeffords has asked some questions about this—about discomfort with the underlying transaction, the interests that were purchased, the conversations themselves, some sense that there was something wrong or there was something off-color here.

We were asked that question in the House proceedings, we were hit with that by some of the Congressmen. And as I explained yesterday when I read the opinion letter we got, we went to the leading judicial ethics expert in the country, Mr. Hazard. He wrote the Code of Judicial Conduct. And we gave him the facts—we gave him the facts the way Judge Nixon remembered them, and we gave him the facts the way Bud Holmes remembered them—and we said, “Is there a problem?”

His letter is exhibit 68A. He said no. Now, I have probably known enough academics in my time that I could find one to say it was a problem. But you can’t impeach him if the leading expert says it was okay. You can’t assume that Judge Nixon felt there was something wrong, because when you look at he did when they come to see him, when they come in that interview, what does he do? This is my third point. He says there was something unorthodox about the transaction—he is not covering it up. If you are trying to cover something up, you don’t say it is unorthodox. He says, “I had another investment—you know, Wiley Fairchild had another one he mentioned to me.” Well, you are not going to imply an ongoing relationship—which is exactly what they’d love to be able to prove, and they can’t prove—you are not going to imply that if you are trying to cover it up, if you are self-conscious about it, if you are worried about it. He is being candid. He is not trying to divert the investigators. He is telling them is on his mind, is in his mind, he can fish out of it.

In fact, before the grand jury, when he ended—it is at page 79 of the transcript—he said to the grand jury, “Before I go, I would like to ask anyone on this grand jury if there is any question they would like me to ask with reference to the *Drew Fairchild* case because I’ll be glad to answer it.” He is not running and hiding.

The fourth point on this. The conversations in March of 1983, they were processed in his own mind—and I have referred to this—they were processed in his own mind as a blackmail conversation, not as a conversation concerning Drew Fairchild. Nine days before that interview, nine days before that transcript is taken, Mr. White-Spunner goes and sees Wiley Fairchild, because Wiley Fairchild has made a blackmail complaint. Wiley Fairchild—and Mr. White-Spunner agreed Mr. Fairchild had blackmail on the brain. And he told them all about his suspicions.

So Mr. White-Spunner briefs the prosecutor. He tried to say he really was just there taking notes—I don’t know if that’s right or not—but he briefs the prosecutor, they go in, and there is not a single question on that. Maybe they didn’t think to ask Judge Nixon about it because they couldn’t figure out exactly Wiley was saying. Maybe they didn’t think it was a very good allegation. Maybe they just didn’t think of it. But they didn’t ask the question in a way that was going to plug into how Judge Nixon had processed that information.

The fifth point, neither Wiley Fairchild nor Carroll Ingram—and I have made this point, so I am going to make it quickly—neither of them remembered it when they got the grand jury. They were subpoenaed. They were interviewed beforehand. They knew that this was coming up. It wasn't at the center of their lives, either. It wasn't a big deal. So when they got into the grand jury, they didn't mention it either.

Well, I want that same standard that has been applied to those witnesses, I want it applied to Judge Nixon.

In fact, just for a second I want to talk about how Mr. Ingram remembered it. Remember he said he was in the waiting room at National Airport. He came up to Washington in January 1985. They are subpoenaing his office staff. He is a little unhappy about how things are going. He comes up to Washington, meets with them, makes no progress with the prosecutors. He is in the waiting room. His lawyer calls Wiley Fairchild's lawyer. Wiley Fairchild's lawyer says, "Do you know anything about the phone call?"

Mr. Ingram says, "Yes. I had that exchange with Judge Nixon. Yes, there was some reference to it, I bet. And then Bud came to me in July—or August—and he told me—he asked about it. Yes, I know something about it."

Well, there is Carroll Ingram, very nervous, very scared, going to the prosecutors: "What is my problem? What is the problem?" He didn't come up with the phone call until someone prompted him. Nobody is questioning his integrity. Nobody is questioning his veracity.

Now I want to read Mr. Ingram's response to Senator Mack's question on this because I thought it very truly reflected what a witness' dilemma is, trying to reconstruct and explain after the fact why he didn't remember something.

At page 440 of the transcript we have, he says: "So quite frankly, in the grand jury room when I was asked that question, I honestly said that I had not had any discussion with Judge Nixon because I hadn't." So he is sticking to that point—"I hadn't."

But then he says: "And what's more than that, probably that particular phone call at that time probably did not even go through my mind that I had had with him." It wasn't a big deal. That's what Judge Nixon has told you.

Indeed, even agent White-Spunner—he testified that he couldn't remember memos he had written, he couldn't remember meetings he had. These things happened a little while ago. We are human; we forget. You can't lose sight of that.

Sixth, as a Federal judge, Judge Nixon had every motive in the world not to lie. He knew he would be held to a high standard of conduct. Every judge knows that. He knew that the grand jury had focused on his conduct. He volunteered before it. It would have been reckless to have appeared before that grand jury and lied.

I just want to give an example of how this sort of thing can happen. In the House hearings, the prosecutor himself was the first witness before the House. I was permitted to cross-examine him. We have always wondered about this *Petit Bois Island* case—I mentioned it initially—and I asked him about it some. I asked him if he had any involvement—this is at page 62 of their transcript—

"Did you have any involvement in the *Petit Bois Island* investigation?"

He answered: "Involvement in the sense that there would be grand jury time scheduled. I would go down to Mississippi; the grand jury would be shared between the two teams, the prosecutors and agents. I was generally familiar with what was going on. I had no official responsibility ever. I never interviewed any witnesses. I never appeared in the grand jury in the *Petit Bois* case or anything like that. I never appeared in the grand jury in the *Petit Bois* case or anything like that."

So I asked him: "So you never questioned any witnesses concerning *Petit Bois Island* before the grand jury?"

He answers: "No."

I asked him: "You're sure of that?"

He said: "Refresh my recollection." He's a smart guy. He thinks maybe he's getting out a little too deep.

"It's possible there would have been a custodian, and Ralph Martin would have been ill or indisposed, and I took evidence. But I don't have a—as we speak now, I don't have a recollection of that."

Those statements were not accurate. We have an exhibit in this record; it is exhibit 33. Mr. Weingarten questioned Bud Holmes for eight pages in his second grand jury appearance about *Petit Bois Island*. Eight pages of questioning is, I don't know, ten minutes. That is about how long Judge Nixon's conversations were on the date in question.

I have never referred Mr. Weingarten for investigation on this. I don't think he intentionally lied. I think the last thing in the world he wanted to do was say something inaccurate—certainly, when Judge Nixon's lawyer was questioning him. He just didn't remember.

Even that savvy prosecutor, sophisticated in the ways of clever questioning—he just messed it up, like Judge Nixon did. And any clever questioner can do that to anybody, to any public official in this country. And if you have affirmed that, if you say this is an outrage, this man has to be thrown off the bench, you are affirming reducing law enforcement to target practice.

Now, I know Senators Chafee and Murkowski yesterday asked some good questions and wondered why Judge Nixon did not just go to the Justice Department when he was reminded of the blackmail conversations by Bud Holmes in February 1985. He is at the courthouse; Bud says the judge denied the call. The judge clearly remembers that Bud was trying to get him to deny the call.

The question is why didn't he go down to the Justice Department and straighten it out. I don't know if I can express to you clearly enough and effectively enough just how unrealistic that suggestion is. I do grand jury work. You do not let a witness go before the grand jury without immunity or at least a letter from the prosecutor that he is only a fact witness. You just don't do it. That's the kind of letter Carroll Ingram got in 1985 when he went back the second time. It is exhibit 45 in our materials. And he got that letter because he was not "the big prize". "Big prizes"—Judge Nixons—they don't get those letters. They are never just a fact witness; they are the target.

Now, that puts that public official in a terrible Catch-22. If he doesn't testify, then he is thought to be covering something up. That is the inference that is being struggled with here; I recognize it. But if he does testify, he delivers himself to his enemies. That may sound dramatic, and I don't mean to overdramatize it. But you've got these fellows, these bright guys over in the Justice Department, and their job every day is to put you in jail. They come in to work, and their job is to put you in jail, for two years.

Look at how they mistreated witnesses. They sandbagged Carroll Ingram. He asked them for the documents the night before he went to the grand jury. They wouldn't show him the documents. They were going to play their little trick in front of the grand jury. They told Bud Holmes, "Oh, just some routine continuances we'll ask you about." They got him in there, and they grilled him.

By February 1985, if Judge Nixon had voluntarily gone down to the Justice Department, he would have been a fool. He had already gone to the grand jury voluntarily, clearly hadn't persuaded anybody of anything. By February 1985, Wiley Fairchild has plead guilty to paying Judge Nixon a gratuity, even though Judge Nixon hasn't received a gratuity. Mr. Fairchild has been charged with perjury—an extraordinarily poor perjury count. I am not even going to go into it, though.

Judge Nixon did testify, and with some emotion and with some strong language yesterday, about the atmosphere at the time, the hysteria that was going on, the suspicion and the tension that the investigation had caused. It had infected his entire community. It had infected his place of work, his courthouse. He was "the big prize." They were coming after him. And you have to understand what that is like. It is like being run over by a steamroller in freeze-frame. Every day it is a little closer, it is a little closer, and it keeps coming at you and keeps coming at you, and you know it is coming at you.

The decision not to put his head in the noose the second time—I don't think that can be second-guessed responsibly. I don't think you can draw an inference from that. And I made clear professionally, that would have been my advice to him as well.

In closing, I want to say that we really—and I am speaking on behalf of Judge Nixon; we have talked about this—we appreciate how much this panel has wrestled with the facts and the issues. You have raised some hard questions, and we appreciate the pointedness of the questions. We realize that we ask you to take a step of real political courage. The easy vote is for these articles. But we have been encouraged and heartened by your willingness to roll up your sleeves and dive into the case.

I can only urge you to study all the facts. We are confident you will conclude that Walter Nixon did not knowingly and intentionally make false statements; that he is entitled to have his good name returned to him; that his family is entitled to have their good name returned to them; that he is entitled to make a contribution professionally and as a United States district judge to his country; and his country is entitled to his excellent services as a U.S. district judge.

Thank you.

CLOSING STATEMENTS BY THE CHAIR

The CHAIRMAN. This panel has now completed the testimony and evidence submitted by the parties. The committee will submit a certified copy of the transcript of these proceedings and testimony taken herein and in addition will, pursuant to Senate Resolution 128, report to the full Senate with a statement of facts that are uncontested and a summary, with appropriate references to the record, of evidence that the parties have introduced on contested issues of fact.

The parties are requested to file on or before Friday, September 22, 1989 a statement which for each material issue in the case contains that party's view, annotated to the daily transcripts and exhibits and complete record of this proceedings, of (1) what facts are undisputed, and (2) what evidence supports their position with respect to disputed facts.

The committee anticipates that the evidentiary record and its report will be submitted to the full Senate in early October. Following the committee's report to the full Senate, the parties will be notified of the schedule for the submission of post-trial briefs that will be printed for use by the full Senate in the floor proceedings in October.

The parties should be prepared to proceed by October 17, 1989. We will, of course, advise the parties of both the schedule for those proceedings and the manner in which they will be conducted as soon as those determinations have been made.

As chairman, I do want to thank all Senators, members of this panel, for their attention, their diligence and their support of me in what is a unique constitutional obligation that is not to be undertaken lightly.

I want to thank the lawyers and counsel on both sides for their very fine and thorough presentations of the evidence and the construction of that evidence as they saw fit and which was done in a highly professional manner.

As a former member of the House of Representatives, I thank my former colleagues, the members of the House, for their obvious thorough participation in all matters, including the presentation, the knowledge, which I am sure was necessary though painful and arduous to present to the full House of Representatives.

And I thank our counsel, Donald Purdy and Morgan Frankel and their staffs of the Senate, for all of the extraordinary work that goes into all of these books and cross-references and preparing the members for us to exercise these responsibilities with some degree of authority.

The proceedings are closed.

[Whereupon, at 11:45 a.m., the proceedings were concluded.]

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